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Canada

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning the Sale and Distribution of Surgical Rubber
Gloves and Certain Other Surgical Supplies



DEPARTMENT OF JUSTICE
OTTAWA



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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING THE SALE AND DISTRIBUTION OF
SURGICAL RUBBER GLOVES AND CERTAIN OTHER
SURGICAL SUPPLIES

COMBINES INVESTIGATION ACT

Ottawa
1959



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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

A. S. Whiteley, B.A., M.A.
Member

RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

May 19, 1959

Honourable E. Davie Fulton, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission, arising out of an inquiry into the sale and distribution of surgical rubber gloves, needles, syringes, catheters and other medical and surgical supplies.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard by the Commission at Toronto on June 16 and 17, 1958. In these proceedings Mr. F. N. MacLeod appeared for the Director of Investigation and Research, Mr. E. S. Livermore, Q.C. appeared for Sterling Rubber Company Limited, and Messrs. John F. Perrett, Q.C. and Henry Supplee appeared for Bard-Parker Company, Inc. of Danbury, Connecticut, and Mr. Cooper Campbell (doing business under the trade name and style of Cooper Campbell & Co.).

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was brought before the Restrictive Trade Practices Commission by the Director of Investigation and Research under the Combines Investigation Act, pursuant to section 18 of the Combines Investigation Act, R.S.C. 1952, Chapter 314, which reads as follows:

"18. (1) At any stage of an inquiry,

- (a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 411 or 412 of the Criminal Code, and
- (b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry which shall be submitted to the Commission and to each person against whom an allegation is made therein.

(2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2)."

A statement of the evidence obtained in the inquiry was prepared by the Director of Investigation and Research and submitted under date of May 2nd, 1958 to the Restrictive Trade Practices Commission and to Sterling Rubber Company Limited and Bard-Parker Company, Inc. and Mr. Cooper Campbell, against whom allegations were made.

The following reference to the origin of the inquiry is made in the Statement of Evidence:

"2. This inquiry was made as the result of an informal complaint alleging that resale prices were being maintained by manufacturers in the surgical supply field generally and, in particular, in connection with the resale of surgeons' rubber gloves, syringes, needles and catheters."

Section 34 of the Combines Investigation Act reads:

"34. (1) In this section 'dealer' means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity

- (a) at a price specified by the dealer or established by agreement.
- (b) at a price not less than a minimum price specified by the dealer or established by agreement,
- (c) at a markup or discount specified by the dealer or established by agreement,
- (d) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (e) at a discount not greater than a maximum discount specified by the dealer or established by agreement,

whether such markup or discount or minimum markup or maximum discount is expressed as a percentage or otherwise.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

- (a) has refused to resell or to offer for resale the article or commodity
 - (i) at a price specified by the dealer or established by agreement,
 - (ii) at a price not less than a minimum price specified by the dealer or established by agreement,
 - (iii) at a markup or discount specified by the dealer or established by agreement,
 - (iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
 - (v) at a discount not greater than a maximum discount specified by the dealer or established by agreement; or
 - (b) has resold or offered to resell the article or commodity
 - (i) at a price less than a price or minimum price specified by the dealer or established by agreement,
 - (ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement, or
 - (iii) at a discount greater than a discount or maximum discount specified by the dealer or established by agreement.
- (4) Every person who violates subsection (2) or (3) is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both. 1951 (2nd Sess.), c.30, s.1; 1952, c. 39, s. 4."

The allegations made by the Director are set out in the Statement of Evidence as follows:

"(a) Sterling Rubber Company Limited

147. The evidence which has been reviewed in this Statement indicates that Sterling Rubber Company Limited, largely through the activities of T. A. McEwan, Sales Director and latterly Vice-President in charge of sales for the company, has since 1954 attempted to require and induce its dealers to resell its surgeons' rubber gloves at prices established by it. It attempted to carry out this policy by persuasion but, when

persuasion alone proved insufficient in the instances noted in the Statement, it either refused to supply dealers or deliberately slowed down deliveries of gloves to dealers who cut suggested resale prices so that these dealers would have difficulty in filling orders from customers.

148. Mr. McEwan contended that the company's policy of attempting to maintain resale prices of its gloves was necessary because of conditions in the surgical supply field. This inquiry was rather limited in scope and the surgical supply field was only examined in a broad way. However, the evidence which is available indicates that certain factors tend to restrict competition in this field. There is, first, the importance of preference by doctors for particular brands which, in many instances, eliminates virtually all competition from other brands of the same type of product. The effect of this situation on competition is aggravated by the system of exclusive or semi-exclusive dealers which also tends to eliminate competition in the sale and distribution of particular brands of products. Further, the exclusive or semi-exclusive dealerships are held chiefly by the large long-established firms and this constitutes a barrier to the entry of new firms or to the expansion of small firms already in the field. The result is a substantial restriction on competition in the field, especially on price competition.

149. Mr. McEwan argued that, as related to Sterling Rubber, this means that, when there is price competition among dealers selling Sterling brand surgeons' rubber gloves, the large dealers are likely to withdraw their support of Sterling brand and attempt to push sales of other brands because, for the reasons outlined, there is unlikely to be price competition in the sale of such other brands. Put another way, the argument is to the effect that when there is price competition among dealers selling Sterling gloves each dealer faces that competition in addition to the competition from other brands. On the other hand, the dealer who holds an exclusive or semi-exclusive franchise on another brand faces brand competition but is unlikely to face price competition within his own brand.

150. It should be re-emphasized that, because of the limited scope of the inquiry, any generalizations which

are made about the surgical supply field are necessarily tentative. Nevertheless, the evidence which is available does indicate that Sterling Rubber encountered certain difficulties because of the restrictive distributive practices general in the field. It does not follow, however, that the only or the best way of meeting these difficulties was for Sterling Rubber to adopt a policy of resale price maintenance even if such a policy had been legally permissible which, of course, it was not. However, while the circumstances do not therefore justify a policy at variance with section 34 of the Combines Investigation Act, they do suggest the desirability of foreign suppliers in this field making their products more freely available to Canadian dealers generally.

151. It is my allegation that Sterling Rubber Company Limited, being a dealer within the meaning of section 34 of the Combines Investigation Act, required or induced, or attempted to require or induce, other persons to resell surgeons' rubber gloves at prices specified by the said Sterling Rubber Company Limited. In its pursuit of this policy, it either refused to sell or supply surgeons' rubber gloves or delayed or threatened to delay delivery of surgeons' rubber gloves to, inter alia,

Hyman Surgical Supply Ltd., Winnipeg, Manitoba;
Sterling Surgical Supply Company, Edmonton,
Alberta;
Gilbert Surgical Supply Company Limited, Toronto,
Ontario;
Imperial Surgical Company, Winnipeg, Manitoba; and
Allen & Hanburys Company Ltd., Toronto, Ontario."

The five situations were earlier summarized in the Statement of Evidence as follows:

- "(1) Alleged cutting off or threatening to cut off supplies to Gilbert Surgical Supply Company Limited (also known as Gilbert and Company) in 1955 and again in 1957;
- (2) Alleged slowing down of deliveries to Hyman Surgical Supply Ltd. after that company had secured a contract to supply surgeons' rubber gloves to University Hospital in Saskatoon at less than Sterling Rubber's suggested resale price;

- (3) Alleged cutting off of Sterling Surgical Supply Company (i.e., C.W. Kitchen) as a dealer;
- (4) Alleged threats to slow down deliveries to Imperial Surgical Company (Winnipeg) unless that firm revised its resale price of surgeons' rubber gloves to the Royal Alexandra Hospital, Edmonton; and
- (5) An alleged refusal to supply surgeons' rubber gloves to Allen & Hanburys Company Ltd. unless that company revised a quotation to University Hospital, Saskatoon."

"(b) Bard-Parker Company, Inc.

152. The evidence which has been reviewed in this Statement indicates that Bard-Parker Company, Inc. has, for some years, attempted to control the prices at which its products, and particularly its surgical blades, are resold by its dealers. This control of resale prices has been sought to enable the company to ensure that those customers who purchase the largest quantities of surgical blades are charged the lowest net prices, both on surgical blades and related products, and this result is achieved by allowing higher discounts on larger purchases as described in detail above. The lower net price per unit thus available to purchasers of larger quantities is designed to encourage customers to increase their purchases of Bard-Parker surgical blades. While the policy may have had this effect, it also operated to stifle competition at the dealer level and to ensure that dealers charged the resale prices set by the company.

153. It is my allegation that Bard-Parker Company, Inc. of Danbury, Connecticut, and its Canadian representative, Cooper Campbell (doing business under the trade name and style of Cooper Campbell & Co.), required or induced, or attempted to require or induce, persons reselling in Canada surgical blades, handles and other products manufactured, supplied or sold by the said Bard-Parker Company, Inc. or by Parker, White & Heyl, Inc. to resell such surgical blades, handles and other products either

- (a) at prices not less than minimum prices, or

- (b) at discounts not greater than maximum discounts

specified by the said Bard-Parker Company, Inc."

2. Parties Named in the Statement of Evidence

The following information about the parties against whom allegations are made by the Director is contained in the Statement of Evidence:

Sterling Rubber Company Limited (in this report generally referred to as "Sterling Rubber") manufactures rubber products which are made by the dipping process at its factory at Guelph, Ontario. Its products include rubber gloves for industrial and household use and for surgeons, veterinarians, obstetricians, etc., meteorological balloons, drainage tubes, and certain specialty items. Surgeons' rubber gloves are its principal line (evidence of J. W. Amos, p. 363).

T. A. McEwan has been in charge of sales and selling policies of the company since 1954. Prior to that date, sales were handled by J. W. Amos who now devotes his full time to his duties as Secretary-Treasurer of the company.

Prior to the second world war, a large proportion of the company's production of surgeons' rubber gloves was exported. Because of difficulties arising out of the war and of currency restrictions and other factors during the post-war period, the company's export trade has declined drastically and most of its sales are now made in the domestic market.

Bard-Parker Company, Inc. (in this report generally referred to as "Bard-Parker") is a United States company located in Danbury, Connecticut. Its principal products are surgical handles and blades and certain related products. An associated company, Parker, White & Heyl, Inc. manufactures germicidal solutions. The products of both companies are described in descriptive literature marked as Serials 35 to 41 inclusive. Both companies are represented in Canada

by Cooper Campbell, doing business under the firm name and style of Cooper Campbell & Co., 713 Terminal Warehouse Building, Toronto, Ontario. Cooper Campbell & Co. acts as a manufacturer's agent and is the Canadian representative for a number of lines in the surgical supply field.

3. Hearings and Witnesses

In the course of the inquiry conducted by the Director the books and records of various firms dealing in surgical supplies were examined and, in the case of some firms, certain documents were selected and copied and the original documents returned to the premises on which they were found. All documents selected for copying were marked with code letters in the upper right-hand corner to indicate the particular premises on which they were found, and each sheet of every document was marked with a separate serial number in the lower right-hand corner, which enables it to be distinguished from all other documents. In this report the serial numbers will be given in referring to a particular document.

During the period from July 4, 1957 to July 22, 1957, the following witnesses were examined on behalf of the Director before Mr. C. Rhodes Smith, Q.C., Chairman, or Mr. A. S. Whiteley, Member of the Commission, sitting as hearing officers at the places indicated:

At Toronto, July 4-5, 1957, before Mr. C. Rhodes Smith, Q.C. -

D. S. Thomas (Allen & Hanburys Company Ltd.), Toronto, Ontario.
V. G. Y. Bowes (Gilbert and Company), Toronto, Ontario.
L. W. Wheeler (Ingram & Bell Limited), Toronto, Ontario.
Cooper Campbell (Cooper Campbell & Co.), Toronto, Ontario.
Gordon Campbell (Cooper Campbell & Co.), Toronto, Ontario.
J. R. Gilbert (Gilbert and Company), Toronto, Ontario.

At Toronto, July 8-9, 1957, before Mr. A. S. Whiteley -

Henry Enns (C. R. Bard, Inc. of Summit, New Jersey), Port Credit, Ontario.
L. F. May (Ingram & Bell Limited), Toronto, Ontario.
J. M. Cross (Becton, Dickinson & Co., Canada, Ltd.), Toronto, Ontario.
E. J. Turner (The J. Stevens & Son Co. Ltd.), Toronto, Ontario.

L. B. McNichol (The J. Stevens & Son Co. Ltd.), Toronto,
Ontario.

At Guelph, July 10, 1957, before Mr. A. S. Whiteley -

J. W. Amos (Sterling Rubber Company Limited), Guelph,
Ontario.

T. A. McEwan (Sterling Rubber Company Limited), Guelph,
Ontario.

At Calgary, July 15, 1957, before Mr. C. Rhodes Smith, Q.C. -

M. D. Shyba (Standard Surgical Supply Ltd.), Calgary,
Alberta.

At Edmonton, July 16, 1957, before Mr. C. Rhodes Smith, Q.C. -

C. W. Kitchen (Sterling Surgical Supply Company), Edmonton,
Alberta.

At Saskatoon, July 17, 1957, before Mr. C. Rhodes Smith, Q.C. -

W. A. Corbett (Corbett Surgical Supply Limited), Saskatoon,
Saskatchewan.

E. V. Wahn (University Hospital), Saskatoon, Saskatchewan.

C. R. Elliott (University Hospital), Saskatoon, Saskatchewan.

At Winnipeg, July 18-22, 1957, before Mr. C. Rhodes Smith, Q.C. -

L. J. Carson (Stevens & Son Limited), Winnipeg, Manitoba.

B. E. Dartnell (Stevens & Son Limited), Winnipeg, Manitoba.

F. W. Robbie (Campbell & Hyman Limited), Winnipeg,
Manitoba.

C. E. Laurin (Imperial Surgical Company), Winnipeg, Manitoba.

F. E. Ford (Ingram & Bell Limited), Winnipeg, Manitoba.

J. Westman (Fisher & Burpe, Limited), Winnipeg, Manitoba.

F. A. Lewis (Fisher & Burpe, Limited), Winnipeg, Manitoba.

By an order dated May 16, 1958 the Commission fixed Monday, the 16th day of June, 1958, at 10 o'clock in the forenoon in the City of Toronto in the Province of Ontario as the date, time and place at which argument in support of the Statement of Evidence could be submitted and at which persons against whom any allegation had been made in such Statement would be allowed full opportunity to be heard in person or by counsel, this proceeding being in accordance with section 18(2) of the Act. Subsequently the parties were notified that the proceedings would be held in the Board Room, 8th Floor,

Postal Station "Q", 25 St. Clair Ave. East, Toronto, Ontario. In giving notice of the hearing the Commission further informed the parties that at such hearing they would be given an opportunity of further examining, or cross-examining, any witness who had been heard during the course of the inquiry, and would also be given an opportunity to call additional witnesses and to submit any additional documentary evidence.

The hearing was held on July 16 and 17, 1958, the following appearances being registered:

F. N. MacLeod	- for Director of Investigation and Research
John F. Perrett, Q.C., Toronto, Ontario, and Henry Supplee, Rutherford, N.J.	- for Bard-Parker Company, Inc. of Danbury, Connecticut and Mr. Cooper Campbell (doing business under the trade name and style of Cooper Campbell & Co.) of Toronto, Ontario.
E. S. Livermore, Q.C., London, Ontario.	- for Sterling Rubber Company Limited of Guelph, Ontario.

Before argument was heard at the hearing in regard to the allegations against Sterling Rubber the following witnesses were called on behalf of this company and were examined by counsel. Certain exhibits were also received, numbered H-1 to H-25.

William T. Amos	- Secretary-Treasurer, Sterling Rubber Company Limited
Thomas A. McEwan	- Vice-President and Sales Director, Sterling Rubber Company Limited.

For purposes of clarity, reference in this report to evidence given at the earlier hearings for the taking of evidence will be made as follows: "Evidence, p. . . .". Reference to evidence given at the hearing before the Commission will be made as follows: "Hearing, p. . . .".

4. Positions Taken by the Parties with Respect to the
Statement of Evidence

At the request of the Commission, counsel representing the parties concerned submitted to the Commission before the date of the hearing written briefs setting out the position taken by their clients in regard to the Statement of Evidence and indicating the points on which issue was taken with the Director. As separate allegations were made by the Director with respect to Sterling Rubber and Bard-Parker and Cooper Campbell the position of the respective parties may be stated in turn.

A. Sterling Rubber Company Limited -

(1) Issue was taken with all statements in the Statement of Evidence to the effect

(a) that Sterling Rubber attempted to require or induce its dealers to resell surgeons' rubber gloves at prices suggested by it;

(b) that Sterling Rubber refused to supply gloves to dealers or deliberately slowed down deliveries of gloves to dealers so that these dealers would have difficulty in filling orders from their customers;

(c) that Sterling Rubber exacted any promises from any dealers to maintain suggested retail prices or that it made any threats of any kind if dealers did not sell rubber gloves at the suggested retail price;

(d) that Sterling Rubber offered any consideration or inducement to any dealer to sell at the suggested retail price;

(e) that its dealers made any promises to Sterling Rubber to sell at suggested retail prices.

(2) With respect to Gilbert Surgical Supply Company Limited issue was taken

(a) with any statements or opinions expressed by Bowes or Gilbert that orders to Gilbert were cut off or slowed down or threatened to be cut off or slowed down because Gilbert had sold Sterling Rubber products below the suggested retail price;

(b) with any evidence that Gilbert was reinstated as a dealer on his promise not to cut prices.

(3) Sterling Rubber proposed to tender -

(a) evidence denying certain conversations alleged by Gilbert and Bowes to have taken place;

(b) invoices showing the quantities of gloves purchased by Gilbert in the years 1954 to 1957 inclusive;

(c) a statement showing dates of payment of various invoices by Gilbert and a statement of the position of Sterling export orders in 1957;

(d) evidence as to the total number of the company's dealers and the quantities of their respective purchases compared with Gilbert;

(e) evidence to show that Sterling Rubber was aware from time to time that Gilbert was constantly selling gloves below the suggested list price;

(f) that Gilbert was reinstated because he promised to pay promptly, to buy in larger quantities and to keep stock on hand;

(g) evidence generally as to Gilbert's operations.

(4) With respect to Hyman Surgical Supply Limited issue was taken with any statements or opinions expressed in the Statement of Evidence that Sterling Rubber slowed down deliveries to Hyman after Hyman received the contract to supply gloves to University Hospital at Saskatoon.

(5) Evidence would be tendered -

(a) to show that the decision by Sterling Rubber to change the status of Hyman as a dealer of Sterling Rubber was made before Sterling Rubber became aware that Hyman had secured a contract at the University Hospital, Saskatoon;

(b) that Sterling Rubber promised to meet the orders which Hyman had on hand;

(c) that there were delays in filling Hyman's orders but that such delays were due

- (i) to the extreme heat in June and July which resulted in the plant closing down for certain periods or being forced to slow up production;
 - (ii) to the plant being closed down for holidays;
 - (iii) to previous heavy export and domestic orders.
 - (d) by way of invoices and schedules showing purchases by Hyman in 1954 and its credit rating;
 - (e) showing the condition and extent of Sterling Rubber order position in the summer of 1955 and in 1956 and 1957;
 - (f) explanations as to the significance of certain expressions used in letters from McEwan to Shyba;
 - (g) by way of express denial that any threats were made by Sterling Rubber to Hyman or that any promises were extracted from Hyman by Sterling Rubber to maintain suggested retail prices or generally that there was any connection between any delays in the deliveries to Hyman and any alleged cutting of suggested retail prices by Hyman;
 - (h) by way of explanation of shipments made to Stevens & Son Ltd.;
 - (i) by way of explanation of Sterling Rubber's established priority policy.
- (6) With respect to Sterling Surgical Company, issue was taken with any statements or opinions by Kitchen or by any other witness that orders to Sterling Surgical were cut off by Sterling Rubber by reason of any alleged price cutting by Sterling Surgical.
- (7) Evidence would be tendered -
- (a) to show the extent of Sterling Surgical purchases in 1954 and 1955 and the dates of payment for such invoices;

- (b) as to the credit rating of Sterling Surgical;
- (c) by way of categorical denial that any threats were made that deliveries would not be made or that they would be slowed up if suggested list prices were not maintained;
- (d) by way of categorical denial as to the opinions expressed by Kitchen as to the cause of the removal as a wholesale dealer;
- (e) as to the dealer and general supply situation in 1956 in Saskatoon and in Edmonton and the transfer of Kitchen's business from Saskatoon to Edmonton.

(8) With respect to Imperial Surgical Company, issue was taken with any statements or opinions expressed by C. E. Laurin or any other witness that threats were made to slow down deliveries to Imperial Surgical unless the resale prices to Royal Alexandra Hospital at Edmonton were revised upwards.

(9) Evidence would be tendered -

- (a) as to quantities or purchases by Imperial Surgical in 1953, 1954, 1955 and 1956;
- (b) as to the character of the business carried on by Imperial Surgical and its special interests;
- (c) as to the real reason for the delays in shipping orders to Imperial Surgical;
- (d) by way of denial that any threats, promises or inducements were made to Imperial Surgical respecting price cutting or that Imperial Surgical made any promises to Sterling Rubber to maintain prices;
- (e) as to the general character of Imperial Surgical's operations.

(10) With respect to Allen & Hanburys Company Ltd. issue was taken with any statements or opinions expressed in the Statement of Evidence that Sterling Rubber refused to supply rubber gloves to Allen & Hanburys unless that company revised upwards a price quotation to the University Hospital at Saskatoon, and with the statement that Sterling Rubber regarded Allen & Hanburys as a customer of long standing.

(11) Evidence would be tendered -

- (a) to show the purchases by this company from Sterling Rubber in 1954, 1955 and 1956, totalling approximately \$46.00 in three years and which orders did not include any surgeons' gloves except one dozen ordered in 1955;
- (b) to show that Allen & Hanburys, being a subsidiary of an English company, were interested primarily in promoting the sale of an English rubber glove in Canada and not Sterling Rubber gloves;
- (c) to show that Allen & Hanburys were direct competitors with Sterling Rubber rather than a customer of Sterling Rubber;
- (d) that Allen & Hanburys tendered on the University Hospital's request for tenders at Saskatoon when Sterling Rubber had on hand a very heavy quantity of orders due to the economic conditions created by the so-called Suez situation;
- (e) as to Sterling Rubber's established policy of customer priority;
- (f) that Sterling Rubber never asked Allen & Hanburys to sell at suggested retail prices and at no time exacted any promise to sell at such prices and made no threats if they failed so to do;
- (g) that in view of the competitive position of Allen & Hanburys, Sterling Rubber was under no obligation to put itself out to supply Allen & Hanburys in preference to other prior orders and its preferred customers;
- (h) that Allen & Hanburys' record of purchases as far as quantities were concerned, did not entitle them to have wholesale prices from Sterling Rubber;
- (i) that it was difficult for Allen & Hanburys to obtain supplies of English gloves due to the general world situation at the time and they were annoyed because Sterling Rubber failed to help them out of a difficult situation.

(12) Issue was taken with the conclusions of the Director that -

(a) Sterling Rubber refused to supply dealers or deliberately slowed down deliveries of gloves to dealers who cut suggested retail prices so that these dealers would have difficulty in filling orders from customers;

(b) Pursuant to a policy of requiring or inducing or attempting to require or induce persons to resell surgeons' rubber gloves at prices specified by Sterling Rubber, Sterling Rubber refused to sell or supply surgeons' rubber gloves or delayed or threatened to delay delivery of surgeons' rubber gloves to the five companies above named.

(13) Sterling Rubber submitted that the following were the proper conclusions to be drawn from the evidence;

(a) that Sterling Rubber attempted to educate its dealers to sell its products at the list prices suggested by it because

(i) it was desirable to sell at such prices in order that the dealer could make a fair profit and not suffer a loss, and

(ii) because such a practice kept its dealers reasonably happy since sales at various prices by different dealers created discontent among dealers;

(b) that Sterling Rubber in its correspondence with dealers who complained about price cutting endeavoured to create the impression in the minds of such dealers that it, Sterling Rubber, was doing something about such price cutting while not actually doing anything;

(c) that delays in deliveries were due to normal production causes and other legitimate causes;

(d) that price cutting took place constantly in the years 1954 to 1957 inclusive and it was only reasonable that legitimate delays in delivery should coincide as to time with charges of price cutting;

(e) that since Mr. McEwan became the Sales Director of Sterling Rubber early in 1954 it was only reasonable and normal to expect that he would review the list of Sterling Rubber dealers and adopt a policy of attempting to weed out those whose credit was bad or who were only purchasing in very small quantities;

(f) that the reasons for refusing to supply any of the five companies referred to were legitimate and reasonable;

(g) that the weight and quality of the evidence shows that Sterling Rubber did not require or induce or attempt to require or induce any dealer to maintain retail prices.

B. Bard-Parker Company, Inc. and Cooper Campbell -

(1) Issue was taken on behalf of Bard-Parker, Cooper Campbell and Cooper Campbell & Co. with general conclusions of fact presented in the Director's Statement. It was pointed out that the Director had indicated that the general outline of the trade was in some respects an over-simplification and that some exceptions and modifications would be applicable in particular cases. It was submitted that Cooper Campbell and his firm came within these exceptions and modifications so that the broad, general conclusions of fact drawn from the evidence did not apply to that firm. In the case of Bard-Parker it was submitted that the few evidentiary references to that firm in the general outline given in the Statement indicated the opposite of the broad, general conclusions drawn from the evidence and that such broad, general conclusions did not apply to Bard-Parker.

(2) Issue was taken with the allegations made by the Director against Cooper Campbell and his firm which, it was submitted, were not borne out by the evidence. It was further submitted that the evidence clearly indicated that so far as Cooper Campbell and his firm were concerned in no instance were dealers forced to sell surgical blades at prices not less than minimum prices, or at discounts not greater than maximum discounts, and in a great many situations, Cooper Campbell merely reported to his principal, Bard-Parker Company, Inc., as to the facts as he knew them, and in others merely suggested to the respective dealers what was considered to be in the best interests of promoting the increased sale of surgical blades.

(3) Issue was taken with the allegations of the Director against Bard-Parker in so far as they allege an attempt to control prices. It was submitted that paragraph 23 of the Director's Statement indicated that Bard-Parker desired that those customers who purchased the largest quantities of surgical blades were charged the lowest net prices. This, it was submitted, is not only fair and equitable, but is not contrary to any present legislation. It was further submitted that the evidence and documents appearing in Chapter III of the Statement of Evidence did not indicate that dealers were forced to sell surgical blades at prices not less than minimum prices, or at discounts not greater than maximum discounts, but they were merely requested to deal fairly and equitably with all purchasers of large quantities, and as appeared by paragraph 130 on page 151, a new dealer was added in Kitchener, Ontario, in 1955.

CHAPTER II

DESCRIPTION OF THE TRADE

The Statement of Evidence prepared by the Director contains a review of the evidence obtained in the inquiry relating to the nature of the products and sources of supply, dealers in Canada, the trade association, list prices and related matters. The following excerpts are taken from the general outline in the Statement of Evidence:

1. Products

"Surgical supplies such as instruments of all types, needles, syringes and catheters, and equipment such as sterilizers, operating and examination tables and other specialized equipment are largely imported into Canada. Surgeons' rubber gloves are manufactured by only one company in Canada. The United States and Germany are the two most important sources of surgical supplies. Lesser quantities are imported from other countries. Witnesses in the trade indicated that Germany, England and the Scandinavian countries are important sources of instruments which require to be made of tempered and forged steel, while the United States is the chief source for equipment. Surgeons' rubber gloves are imported chiefly from the United States and England. There appear to be no statistics dealing specifically with imports in this particular field."

2. Surgical Supplies Dealers

"Dealers in surgical supplies in Canada vary in importance from long-established firms, which do business in all or in large areas of Canada, to small dealers who operate only in one locality. There are also some firms or individuals in the drug and pharmaceutical fields who handle a limited number of surgical lines.

Among the large dealers, the more important appear to be (these are listed alphabetically and not in order of importance):

Casgrain & Charbonneau Ltd., Montreal, P.Q.
Fisher & Burpe, Limited, Winnipeg, Manitoba;
Toronto, Ontario; Edmonton, Alberta; and
Vancouver, British Columbia.
The J.F. Hartz Co. Limited, Toronto, Ontario;
Montreal, P.Q.; and Halifax, Nova Scotia.
Ingram & Bell Limited, Toronto, Ontario; Montreal,
P.Q.; Winnipeg, Manitoba; Calgary, Alberta;
and Vancouver, British Columbia.
The Stevens Companies, i.e.,
The J. Stevens & Son Co. Ltd., Toronto, Ontario.
Stevens & Son Ltd., Winnipeg, Manitoba.
The Stevens Alberta Co. Ltd., Calgary, Alberta.
The B.C. Stevens Co. Ltd., Vancouver, British
Columbia.

The following are particulars of some other dealers referred to in the evidence:

Gilbert and Company is the trading or sales name of Gilbert Surgical Supply Company Limited and Jules R. Gilbert Limited. These companies were set up by J.R. Gilbert and are located in Toronto. Mr. Gilbert purchased a quantity of war-surplus surgical supplies after the war and then developed a continuing business in the field. Because of difficulties encountered when he tried to obtain recognition as a dealer, Mr. Gilbert sought alternative sources of supply and now has a number of lines manufactured (by Japanese manufacturers) to his specifications and under his name.

Sterling Surgical Supply Company was formerly operated by Mr. C.W. Kitchen in Saskatoon. In 1956, Mr. Kitchen sold this business to W.A. Corbett who incorporated a company, Sterling Surgical Supply Company Limited. The name has since been changed to Corbett Surgical Supply Limited. Since selling his business in Saskatoon, Mr. Kitchen has continued to operate another firm, also known as Sterling Surgical Supply Company, in Edmonton.

Hyman Surgical Supply Ltd. was a firm which operated in Winnipeg until it made an assignment in 1956. For some years Mr. Earl Hyman was the principal

figure in the company. He sold his interest to J. Hecther in 1956, some months before the assignment.

Standard Surgical Supply Ltd. of Calgary is a comparatively new firm in the field having been started, as a partnership, about eight or nine years ago. M.D. Shyba, one of the original partners, is the principal figure in the company.

Imperial Surgical Company in Toronto and Winnipeg is the surgical division of Imperial Optical Company Limited. The surgical division has been operated for about nine years. The firm specializes in heavy equipment, recessed cabinet work, special furniture, etc., which are built to specifications. In this Statement, particular reference is made to Imperial Surgical Company in Winnipeg which appears to operate and to be treated in the trade as at least semi-autonomous. Undoubtedly the Winnipeg operations of this firm are becoming important in the surgical supply field but it does not seem to have gained complete recognition as an established surgical supply dealer. For example, in his oral evidence, Cooper Campbell, who represents a number of foreign manufacturers, said:

' . . . In Winnipeg we sell everybody except Imperial Surgical, and they are really an optical company who want to get in the surgical business but can't quite get into it. . . '

(Evidence, p. 169)

Allen & Hanburys Company Ltd. is a wholly-owned subsidiary of Allen & Hanburys Limited of England. The parent company is an important firm in the pharmaceutical and surgical fields and has branches or subsidiaries in many countries. However, it has only operated in the surgical field in Canada, through its subsidiary, for about four and a half years and has been a comparatively small factor in the Canadian surgical supply field to date."

3. Suggested Resale Prices

"All of the witnesses who gave evidence on the point agreed that most manufacturers of surgical supplies publish suggested resale prices. In fact it appears that in many cases the only price published is the resale or 'list' price. . . .

. . .

In some instances Canadian list prices are prepared by using U.S. list prices and making changes to compensate for tariff, transportation, or similar factors. This is sometimes done by consultation with the American manufacturer. . . .

. . .

All of the witnesses denied (subject to the specific exceptions noted later in this Statement) that manufacturers in this field have exerted pressure on dealers to maintain suggested prices in recent years. . . .

. . .

The evidence as a whole indicates that the list or suggested prices issued by manufacturers are normally followed by dealers. Representatives of the large dealers testified that this was done as a matter of convenience and also insisted that the margin of profit of dealers in the surgical supply field is small and does not allow price cutting. Some of the witnesses indicated that any discussions between dealers and manufacturers were likely to be discussions in which the dealer would try to get the resale prices raised and the manufacturer would try to keep them down. It was further suggested that, because most surgical supplies are not subject to duty when purchased by hospitals, United States prices in effect represent a ceiling since if Canadian prices are set higher, hospitals will import from the United States.

The evidence also indicates that adherence to resale prices is generally expected by manufacturers and dealers and that failure to observe these prices is regarded as price cutting and as unethical competition. This is particularly true of the large,

well-established dealers. Another factor in the situation is the fact that many manufacturers have salesmen of their own visiting hospitals. These salesmen are primarily interested in having their brands accepted by doctors and hospitals but they do quote prices and accept orders which are normally turned over to surgical dealers to be filled. The prices quoted by such salesmen are, of course, the list prices and help to establish such prices as the regular or standard prices for the products involved.
. . ."

4. Canadian Surgical Trade Association

"As already noted, there is a variety of surgical supply dealers in Canada. The more important are members of the Canadian Surgical Trade Association which was founded about eight or nine years ago, according to various witnesses.

The following firms are presently regular members:

Casgrain & Charbonneau Ltd., Montreal, P.Q.
Down Bros. & Mayer & Phelps Ltd., Toronto, Ontario.
Fisher & Burpe, Limited, Winnipeg, Manitoba, and
Branches.
Ingram & Bell Limited, Toronto, Ontario, and Branches.
Millet, Roux & Cie., Limitée, Montreal, P.Q.
The J.F. Hartz Co. Limited, Toronto, Ontario, and
Branches.
The Stevens Companies, Toronto, Ontario; Winnipeg,
Manitoba; Calgary, Alberta; and Vancouver, British
Columbia.
Imperial Surgical Company, Toronto, Ontario (The Winnipeg
Branch was admitted March 21, 1956, see Serial 184).
Campbell & Hyman Limited, Winnipeg, Manitoba.
G. A. Ingram Co. (Canada) Limited, Windsor, Ontario.
Allen & Hanburys Company Ltd., Toronto, Ontario.

The Association also includes certain 'Class B' members. These are representatives of United States suppliers. Mr. Wheeler, the Secretary of the Association, thought Cooper Campbell (Bard-Parker) and Henry Enns (C. R. Bard, Inc.) were the only Class B members (Evidence, p. 98).

According to the letterhead of the Association (Serial 182), there are Eastern, Central and Western divisions. However, the Central division appears to be the only one which holds formal meetings. In Winnipeg, meetings usually take the form of informal dinners and no minutes are kept.

Meetings of the Association are held infrequently, usually once or twice a year. Witnesses testified that the matters most frequently discussed were credit to dealers and customs' rulings. Prices have been discussed only in a general way. . . .

. . .

It will be remembered that in this field suggested resale prices are published by most manufacturers and, since these are usually followed as a matter of course, the number of prices set by dealers themselves is very limited.

The most important function of the Association seems to be to stamp its members as 'legitimate' or 'recognized' or 'ethical' dealers. Membership means that such companies as C. R. Bard, Inc. who do not use exclusive dealers but who do restrict the number of outlets through which they sell, will sell to the member firm. The exclusive and co-exclusive agencies common in this field are largely held by members of the Association and other members may become sub-dealers as a matter of course if they wish to do so. Courtesy discounts on purchases by one member from another are allowed regularly. In contrast, non-members may or may not be allowed such a discount and in extreme cases certain members may refuse to supply a non-member."

5. Selection of Dealers

"It is a common practice in the trade for a manufacturer or other supplier to restrict the number of dealers who may handle its products. There are several degrees of restrictiveness. First, a manufacturer may appoint an exclusive dealer. This dealer will then be able to buy at the maximum discount, say

40 per cent off list price. The dealer's franchise may allow for the appointment of sub-dealers who will be able to purchase through the main dealer at a lesser discount, say 25 per cent off list price. Other dealers are charged full list price except that they may be granted a 'courtesy' discount of perhaps 10 per cent or 15 per cent which the so-called recognized dealers usually allow to each other when it is necessary for one such dealer to purchase from another such dealer. Second, a manufacturer or other supplier may appoint two or more dealers as co-exclusive dealers. This arrangement is essentially the same as the first arrangement except that there is more than one primary dealer. Third, a manufacturer or supplier may not grant exclusive or co-exclusive franchises but simply restrict its sales to certain specified dealers. Both Sterling Rubber and Bard-Parker follow this practice but the fact that other manufacturers follow either of the first two practices mentioned has important implications, especially in the case of Sterling Rubber, as will appear from later portions of this Statement. Naturally, in any field, the manufacturer or other supplier must consider credit and similar factors before supplying a particular dealer. However, the evidence indicates that in the surgical supply field there is a marked tendency to channel the trade through the large, well-established dealers and to refuse to sell through smaller dealers and that the situation does not exist because of credit or similar factors.

The restriction of the number of dealers who handle certain products is important because of brand preference in this field. Many doctors insist on using particular brands; for example, a surgeon may insist on being supplied with Sterling surgeons' gloves or a urologist may insist on being supplied with Bard catheters. Salesmen strive to have the particular brands which their firms deal in accepted by doctors because such acceptance may mean that the purchasing agent for a hospital will be instructed to buy specific brands and no others. Prices are unlikely to influence the choice of a brand by a doctor who is, of course, primarily concerned with the welfare of his patients and wants the brand which he feels is best. Hence, comparative prices of brands may be of little significance in determining which brand will be purchased by

a particular hospital. When the purchasing agent takes steps to procure the particular brand specified he will in many cases find that the brand is handled exclusively by one firm or co-exclusively by a limited number of firms. Since one firm or one of a limited number of firms will get the business in any event, either directly or through a sub-dealer, there is little incentive to price competition. Moreover, as many, perhaps most, franchises for the leading brands are held by the large, well-established firms, smaller dealers and those breaking into the field, who try to build up their businesses by price competition, are either unable to secure supplies at all or can only secure them at a much smaller discount. In either event they are not able to compete effectively. Hence, competition in this field appears to be severely restrained, not by direct price agreement but rather by distributive practices."

6. Qualifying Remarks

"The foregoing is set out in general terms and is in some respects an over simplification. Thus, although brand preference is important, its importance varies from hospital to hospital. Similarly, the degree of its importance will vary with the product. Obviously a surgeon will be very concerned with the type of blade which he is to use for an operation but is unlikely to be concerned with the types of trays or ancillary equipment used in the operating room. Also, the restrictions on the number of dealers which may handle its products varies from manufacturer to manufacturer. Nevertheless, despite some exceptions and modifications, the outline of the situation which has been given appears to be supported by the evidence as a whole. . . ."

CHAPTER III

ALLEGED ATTEMPTS BY STERLING RUBBER COMPANY LIMITED TO MAINTAIN RESALE PRICES

1. Distribution Policy of Sterling Rubber

Sterling Rubber is the only manufacturer of surgeons' rubber gloves in Canada, which it makes in two types, milled rubber and latex. The features of the two types were commented on in a letter of August 21, 1956 from Mr. McEwan of Sterling Rubber to the Medical Director, Montreal General Hospital, which reads in part as follows:

" . . .

As a supplier of surgeons' gloves to your hospital for over 40 years, we are quite familiar with your requirements, and can supply you with information and suggestions. We are the only manufacturer of surgeons' gloves in Canada and one of the few in the world that produces the two basic types 1) Brown Milled (Pure Gum) and 2) Latex. Much misleading information is given out by the majority of manufacturers which only produce latex gloves. We can give you an objective analysis of both types which may be helpful to you.

As you know, latex gloves are made directly from liquid tree rubber, the fibers of which can only be softened slightly by chemicals. This makes a latex glove relatively hard, inflexible and because of this, sense of touch is affected. To overcome the natural shortcomings of latex gloves manufacturers curve the fingers and taper the gauge. We are the only manufacturer in the world which uses both methods.

Brown Milled Gloves are made from the same liquid tree latex which is smoked and dried in Burma and put into a solid form. This solid rubber is softened by rolling mills so that a Brown Milled Glove has the advantage of being softer, and therefore more flexible, less irritating to the skin and a surgeon has a very acute sense of touch with this type of glove.

Latex gloves being hard can be autoclaved more often but this is only one apparent advantage. Tests run in the University Hospital, London, England, Peter Brent Brigham Hospital, Boston and Kitchener-Waterloo Hospital, Ontario prove that both types of gloves have an average of three (3) uses before being cut or punctured and of no further use for surgery.

A fact not too well known in Canada is that, in any other country hospitals must pay up to 40% more for Brown Milled Gloves than for latex; this is true in England. We do not charge more and in fact less because we have the largest plant in the British Commonwealth and have sold Brown Milled type of gloves to many countries, over 50 to be exact and before the war supplied over one third of all the gloves used in England. The economies from this large scale production on this type benefit our own Canadian Hospitals in lower prices. Unfortunately some are misled into thinking latex gloves must be better as they cost more when the opposite is the case. Also, the only type of American Gloves sold in Canada is the latex type and on which there is a 25% duty. This makes imported gloves much higher in price than Canadian Made 'Sterling' Gloves.

The glove you are now using, No. 523 Brown Milled is the finest manufactured for surgery. If you consider using latex the best alternative would be our No. 2025CF. White latex stains and is hard on interns who may have sensitive stomachs and latex being naturally slippery, we would suggest a firmgrip latex rather than one with a smooth finish.

..."

(Serials 492-93)

Imports of surgeons' rubber gloves are included in the trade statistics with other rubber gloves so that accurate information on the total supply of surgeons' rubber gloves in Canada is not available. In his evidence in the inquiry Mr. McEwan said that he has estimated the figures for the sale of surgeons' rubber gloves in Canada on the basis of the sales of his own company and the total imports of rubber gloves and arrived at a total of between 900,000 to 1,000,000 pairs a year which he thought would be within 10 per cent of being accurate (Evidence, pp. 420-21).

The experience of Sterling Rubber in supplying Canadian requirements for surgeons' rubber gloves and in selling in export mar-

kets was described by Mr. McEwan in a written statement submitted during the inquiry from which the following extracts are taken:

" . . .

The Sterling Rubber Company Limited first began operations in 1912, before which Canada was wholly dependent upon supplies from other countries. The magnitude and risk of this is perhaps best proven by the fact that only the larger countries of the world today have such an industry. Australia never had one until during the last war when supply became critical. No country in Africa or South American [sic], to our knowledge, has such an industry today. More countries are now encouraging the growth of such an industry as in times of war, supplies of surgical rubber gloves become scarce almost immediately. A recent example was at the time of Suez when shipments from England were curtailed.

. . .

From 1912 until 1939 the Sterling Rubber Company Limited compiled a rather amazing record of sales to over 50 countries, possibly the widest sale of any Canadian manufactured product and was in 1939 the largest manufacturer of surgical rubber gloves in the British Commonwealth. The Sterling Rubber Company Limited in 1939 was selling about 30% of its production to Canada and 70% to other countries. You may be surprised to learn that this Canadian Company supplied $1/3$ to $1/2$ of all the surgeons' gloves used in England and the larger proportion of gloves required by countries without manufacturing facilities such as South Africa, Australia, New Zealand and many others. The facilities of the Company were capable of producing many more gloves than required by the total Canadian Market at this time.

When war started, nearly 70%, or all the export business of the Company was lost and due to many factors affecting and limiting Canadian exports in general, much of this business is permanently lost. However, the Sterling Rubber Company Limited was able to save Canada from a shortage of surgeons' gloves during 1939 to 1945, when many countries suffered from a severe shortage of what is a critically essential product to the health and welfare of the peoples of Canada. The Department of National Health and Welfare, Civil Defense Branch, which has studied this matter, could confirm this point.

The Company had to survive on the Canadian Market almost entirely and no foreign manufacturer had any appre-

cial surplus production available to sell to Canada until about 1950. United States manufacturers after this time did have excess production which they wished to export and many did so to Canada at prices considerably lower than Fair Home Market Prices in the U.S. market. By 1954 they had captured about $\frac{1}{2}$ of the Canadian Market with gloves of equal or lower quality than Canadian Gloves. The remarkable fact was these U.S. gloves sold to Canadian Hospitals at prices which were considerably higher than Canadian gloves. Canadian Made gloves sold to Canadian hospitals at prices about equal to the cost of the U.S. product to U.S. hospitals. Also the Canadian Government purchase Canadian Gloves at prices lower than the English Government are paying for gloves from English manufacturers. Therefore, the cost of Canadian Made gloves to Canadian consumers was about equal or lower than the cost of domestic products in two competitor countries which were major producers.

The reasons U.S. manufacturers were able to take about $\frac{1}{2}$ the Canadian Market at higher prices and therefore increased cost to our hospitals with resulting higher costs of medical treatment to Canadians are as follows:

Canadian made Sterling Gloves were being and are still being sold to Canadian Hospital through all Surgical Supply Dealers in Canada with acceptable credit. Canadian hospitals could purchase Sterling Gloves from many suppliers and there was considerable selling and price competition involved. Some dealers, concerned over the narrow and uncertain profit margin on Sterling Gloves and in the knowledge the Sterling Rubber Company Limited under Canadian Law could not and did not, guarantee a profit margin, turned to foreign made brands. These dealers procured U.S. Brands which they could sell on an exclusive basis and which they could sell with the margin of profit each decided was required. These exclusive imported brands of gloves which were priced considerably higher than Canadian Made gloves, even with much dumping involved, were given the strong and almost exclusive sales efforts of these dealers. In the process they captured, as previously stated, about $\frac{1}{2}$ the Canadian Market. Please note the Canadian Made product could be purchased from many suppliers by our hospitals, but on these imported exclusive brands only one dealer had the franchise to supply or could quote upon a hospital tender.

Please note that of the major brands being sold in Canada today, the Canadian product is the least costly to

Canadian hospitals and is still the only brand being sold through many dealers to our hospitals.

Due to the loss of most of our export markets, many of which are still not open to us: i.e. to England we have only a token quota which we could sell; and Australia, which, to protect a domestic industry started during the last war, has barred our product, the industry is still in a critical position.

. . .

This coupled with the loss from 1952 to 1954 of about 50% of the Canadian Market to imported U.S. brands, put the industry in Canada in such a condition that there was grave doubt whether it could continue. The loss of such an industry was a tragic possibility. To see Canadian capital wasted, jobs and income lost, and that this Country should become entirely dependent upon a supply of surgical rubber gloves from other countries, which had at times demonstrated their inability or unwillingness to supply such a necessary product to our country, was an appalling possibility. My efforts have been, since 1954, directed to see that this does not occur.

. . ."

(Exhibit G - 1)

In his oral evidence before the Commission, Mr. McEwan made the following comments on the position of Sterling Rubber in the Canadian market:

"A. I think the Commission might wonder at times why we had to placate dealers. Gentlemen, the situation was so serious that if we did not maintain and possibly increase the support of the Canadian dealers there would no longer be surgeon's gloves manufactured in Canada.

Q. Why?

A. Well, as you can see from the profit and loss figures that we have submitted previously, the company had two serious years of losses, and that had to be corrected. Now in 1951 when it became apparent that a Canadian manufacturer could not guarantee them a margin of profit on a Canadian manufactured product, the dealers became very interested in exclusively imported brands on which they could set the price and

they would be assured their profit. They would know they were going to get that profit. As a matter of fact, when I came into this business, all my competitors were sold on an exclusive basis. For your information, you might like to look through this. You will see that today all our competitors from the United States with the exception of one now are still sold on an exclusive basis. So that our dealers, even though they, themselves were cutting prices, if anybody else cut a price they immediately complained and got mad, and their reaction was to stop selling and stocking a Canadian product, which was the Sterling product, and concentrate on selling their imported exclusive brands on which they were assured a margin of profit which they set. The margin of profit on these imported exclusive brands was always higher than we recommended on ours. Now even though, gentlemen, these imported exclusive gloves sold at at least 10 per cent higher price than the Canadian Sterling glove, and now sell at approximately 20 per cent higher than the Sterling glove, they were able to take almost 50 per cent of the Canadian market in four years.

THE CHAIRMAN

That is why I am a little puzzled about it. If your gloves were better and cheaper how would it be that you were not able to hold the market pretty well?

- A. That was the strength. If all the large dealers in Canada are concentrating on selling imported gloves, which they were doing, they more than offset the price advantage that the Canadian product had. That shows you how powerful an influence that was, and it is even more amazing because this American glove, the type of American glove that was coming over into Canada, was latex, and it was selling at 10 per cent higher price than our brown milled glove, which is considered the finest of its type manufactured in the world today. In England, for brown milled gloves, the hospital price is about 40 shillings, and it is approximately 25 shillings for latex, but in spite of brown milled costing about 40 per cent more, the surgeons in England use brown milled almost exclusively. Now when United States manufacturers can come over here and sell Latex, which the English surgeons almost will not use, at a higher price than brown milled, that again shows you the effect of the large dealers concentrating on selling their exclusive brands in preference to a Canadian made product, on which all our dealers,

about 35 of them, had probably the widest distribution of any surgical supply product in Canada. There was price cutting; they all did it. They could not be certain what margin of profit they would get, and I do not blame them, and they turned to exclusive gloves on which they would be assured of a profit. That is the position we were in, and we gained some support from them by this method of placating them into thinking we were doing something that they wanted us to do, which was to encourage a stable level of prices in Canada so that they would make a fair profit. Now, that is what they wanted us to do and we had to placate them into thinking we were doing it, otherwise we would completely lose their support and be out of business. In some cases we were able to placate them; I think it was reasonably successful, but some of them -- I think most of them -- realized it was just a sort of -- a lot of talk, certainly Mr. Shyba realized it was just a lot of noise, but I wanted you to understand why that, which you might call an unusual method was absolutely necessary at the time to save this industry for Canada."

(Hearing, pp. 940-44)

Figures for the imports of all types of rubber gloves for the years 1939 to 1957, as published by the Dominion Bureau of Statistics, were filed with the Commission as Exhibit H-20. The figures are shown in the accompanying table.

Imports of Rubber Gloves into Canada,
1939-57

<u>Year</u>	<u>Dozen</u>
1939	8,274
1940	7,644
1941	2,120
1942	3,920
1943	6,470
1944	8,053
1945	11,930
1946	14,732
1947	15,645
1948	9,670
1949	12,066
1950	11,648
1951	34,693
1952	40,998
1953	51,683
1954	68,540
1955	77,231
1956	75,348
1957	98,550

Source: Dominion Bureau of Statistics

In his evidence Mr. McEwan said that surgeons' gloves have been the predominant type of glove imported until the last three years, when imports of household rubber gloves became more important (Hearing, p. 948).

Mr. McEwan also filed with the Commission a statement showing the trend of sales of surgeons' rubber gloves in Canada by Sterling Rubber for the period 1950 to 1957. In comparison with the year 1950, sales in Canada fell off sharply in 1952, 1953 and 1954 to a level more than 25 per cent below 1950. Some recovery was shown in the years 1955 and 1956 but the figure for 1957 was almost 10 per cent below that for 1950.

Mr. McEwan said in evidence that imports of English surgeons' rubber gloves became important in the Canadian market in 1956 but their sale was minor compared with imports from the United States. He described the situation in regard to the sale of American brands as follows:

"Q. Do you recall offhand the companies who hold exclusive franchises for various American gloves?

A. Yes. The Seamless Rubber Glove, an American glove, is held exclusively by the Stevens Company of Canada. The Modern Pioneer Glove is held exclusively by the Fisher & Burpe Company in Canada. The Wilson glove up until about one year ago, was held exclusively by the J. F. Hartz Company. The one English brand coming in now is held exclusively by the G. H. Woods Company. All our import competition is on an exclusive basis.

. . .

Q. What is the situation there when Stevens is selling Seamless and Sterling brands? How does that work out?

A. What has been happening is that they have put their major sales effort behind their exclusive brand and the Canadian product, in which there is far more competition, is given secondary emphasis.

Q. Is that typical of the several companies who hold exclusive franchises for brands other than Sterling?

A. Yes, it is. Their major effort is always and historically has always been placed behind the exclusive brand that they sell."

(Hearing, pp. 946-47)

Mr. McEwan gave the following explanation for the decline in sales of surgeons' rubber gloves in Canada by Sterling Rubber:

"A. I think it is a combination of three reasons. At the end of Korea the United States manufacturers were in the position of having surplus production, which they started to sell to Canada at up to 25 per cent less than they would sell in the United States. This type of dumping was later stopped. At that time dealers in Canada found that their margin of profit on Sterling Canadian made gloves was uncertain. Therefore exclusive imported brands on which the margin of profit could be set by themselves became very attractive. The major companies with dealers in Canada which dominated the surgical supply distribution to

hospitals, put nearly all their effort behind these imported brands and gave very little effort to the domestic Canadian product which was handled by them all.

Q. Would the overall market for surgeon's gloves in Canada have been increasing during these years?

A. Yes, I would say at a rate of about three percent.

Q. So that the result would be that from 1950 on you obtained a smaller relative share of the market?

A. Of a growing market.

Q. Of a growing market?

A. That is correct."

(Hearing, pp. 949-50)

In the inquiry Mr. McEwan gave the following evidence about his efforts to maintain the sales of Sterling Rubber surgeons' gloves in the face of the competition of imported gloves:

"A. . . . This was, as I said before, part of a plan which was absolutely necessary to keep this industry alive in Canada, of using persuasion and reason to stabilize prices in Canada as much as possible. No force was used. Every time instability started the other dealers would stop selling the product, that is our product specifically, and turned to selling a higher priced import product; and if they went very far there would not be this industry in Canada.

Now we used persuasion, and the industry itself -- that is the wholesale surgical supply business -- is making a very small profit at the present time. We certainly told the dealers that if they were selling at less than the suggested price they were in all probability losing money; and quite often the dealers doing that were the ones who were the poorest credit risk. So we definitely have an interest in keeping the surgical wholesale business in a healthy state in Canada, because it is through them we service Canadian hospitals, and it takes a healthy industry to do it.

Let me add something further: in our effort to placate

dealers into supporting us we gave them the impression that we were doing our utmost. I suppose at times they would assume we would be using some element of force, but no force beyond persuasion and reason -- good sound business reasons were used."

(Evidence, pp. 402-03)

In his evidence before the Commission Mr. McEwan said he discussed with all the dealers selling Sterling Rubber surgeons' gloves the advisability of selling such gloves at the suggested resale prices:

"Q. Did you hold similar discussion with your other dealers?

A. Yes, all dealers. It was an educational programme. It was a matter which, I would say, was discussed with all dealers.

Q. What reasons did you assign, if any, as to why it was desirable that he should sell at the price you suggested?

A. Well, in the first place the industry, contrary to what you might believe, the dealers here in Canada are making lower than normal profits, and the smaller dealers, a great many of them, are in a very weak financial position. Sterling Gloves have the lowest margin of profit of any incorporated in their suggested price of any glove being sold in Canada.

Q. Yes?

A. And that margin of profit is a fair margin, nothing more than that; it is a margin that they need to be able to stock gloves and to be able to service hospitals. It is our feeling that if they sell below that, in all probability they are selling at a loss, and if they did not carry stocks to lower their costs of operation then there would not be local stocks across Canada as a reserve supply for hospitals which is a policy that I know is very important to the Department of National Health and Welfare. We have worked with them on these emergency supplies: we were encouraging stocks being carried all across Canada."

(Hearing, pp. 827-28)

Price lists of Sterling Rubber, included in the evidence, show that it has been the practice of the company to list a "Suggested Hospital Price" in the price lists sent to dealers. Prior to September, 1954 Sterling Rubber had apparently been prepared to sell directly to hospitals, but after that time all sales were made through dealers except in the case of federal departments (Serials 315-16, 590, 591-92). Prior to January 3, 1956 Sterling Rubber listed one wholesale price and one suggested hospital price for each type of glove. In the price list of January 3, 1956 quantity wholesale prices are listed for 1 to 35 dozen and for 36 or more dozen. In the price list of March 10, 1956 suggested hospital prices are listed for 1 to 5 dozen, 6 to 11 dozen and 12 dozen or more. The terms of sale of Sterling Rubber for surgeons' rubber gloves have been "net 30 days f. o. b. Guelph" (Exhibit h-25).

The resale prices suggested by Sterling Rubber would have provided a gross margin of about 28 to 29 per cent on selling price in 1955, when a single price basis was in effect for some major types of surgeons' gloves and from about 24.6 per cent to 35 per cent in 1956 when quantity prices were listed. In the latter case the higher margins would result from purchasing at the price for the larger quantity and selling at the price for the smallest quantity. The range of margins provided in the price lists of Sterling Rubber for purchases in larger quantities and sales in largest quantities is much the same as that previously provided on the single-price basis.

The evidence will now be reviewed in connection with the dealings with the five dealers which form the basis of the Director's allegations.

2. Sterling Rubber and Gilbert Surgical Supply
Company Limited

In his evidence before the Commission Mr. McEwan said that when he joined Sterling Rubber as Sales Director in July, 1954 he began a review of the 35 to 40 dealers and branches selling Sterling Rubber surgeons' gloves. He considered that profitable distribution from the viewpoint of Sterling Rubber required that a dealer should have annual purchases of not less than \$2,000 per year. There were about seven dealers buying in lesser volume when Mr. McEwan assumed his position, and he regarded such volume of purchasing as being uneconomic. The review of dealerships extended for more than a year while Mr. McEwan made visits across Canada in order to see if some should be taken off the list of dealers because of small volume. Among the dealers in this group was Gilbert Surgical Supply Company Limited, Toronto (Hearing, pp. 818-22). This dealer will now be referred to as Gilbert Surgical.

Early in 1955, sometime prior to March 25, Sterling Rubber notified Gilbert Surgical that it was dropped from the list of Sterling Rubber dealers. In his evidence before the Commission Mr. McEwan said that the reasons for this action were, first, the small volume of purchases by Gilbert Surgical (amounting to \$858.09 in 1953 and \$1,128.61 in 1954, Exhibit H-6) and the tardy payment of accounts of Sterling Rubber by Gilbert Surgical (Hearing, pp. 821-22). In 1953, Sterling Rubber invoiced 9 orders to Gilbert Surgical, of which only 2 were paid within 40 days, and in 1954 there were 8 invoices, of which only 3 were paid within 40 days.

Following the action of Sterling Rubber in dropping Gilbert Surgical from its list of dealers, Mr. Bowes, Sales Manager of Gilbert Surgical, visited Mr. McEwan in Guelph to discuss the situation. At the time he gave evidence in the inquiry Mr. Bowes said he had a vague recollection of his discussion with Mr. McEwan (Evidence, p. 61), and Mr. J. R. Gilbert, who had discussions with Mr. McEwan subsequently, said that he could not recall the dates or actual discussions. Part of Mr. Gilbert's evidence follows:

"Q. Will you tell us now what those discussions were?

A. I can't from the point of view of dates or of actual discussions, or as to the actual fact of time or anything like that, but it all hinged on the fact that they had got information which should have been of a highly confidential nature, whereby we were giving rebates to certain hospitals on the purchases of gloves; and the information had come to them, and they had voluntarily suggested discontinuing supplying us, and for a time they were withholding shipments. Mr. Bowes had gone down to see them to discuss the matter in person; and in effect we were practically told that unless we adhered to a definite price structure they would not supply us.

Q. Did you in fact adhere to their price structure after that?

A. After that we did."

(Evidence, pp. 180-81)

Mr. McEwan's recollection of the discussion with Mr. Bowes in the spring of 1955 was given in evidence before the Commission as follows:

"Q. What was the general nature of the discussion?

A. Well I told him that they had a very poor record of paying their bills, plus the fact that their volume was so low it was costing us money to handle them as a dealer, and therefore we could see no reason why we should continue to supply them.

Q. And what was his reply to your position?

A. Well he assured me that if we gave them the privilege of selling our products again they would pay their bills within our terms, which were 30 days.

Q. That he would do that?

A. Yes, he would do that.

Q. What else?

A. Plus that they would attempt to increase their volume to the point where it would be economical and profitable for us to handle it.

Q. Were there any other stipulations laid down?

A. None whatsoever.

Q. Was there any discussion at that time with respect to the prices that he was to charge, or that his company was to charge?

A. No."

(Hearing, pp. 823-24)

Mr. McEwan was under the impression that Gilbert Surgical had been dropped as a dealer for a period of three months in 1955 and then had been temporarily reinstated. The list of invoices contained in Exhibits H-1 and H-2 has no entries from November 16, 1954 to March 16, 1955, but as the number of order placed previously was small this gap may have been caused by an absence of orders. From March, 1955 on invoices are shown for each month and usually there are a number of invoices in each month.

Although Gilbert Surgical again became tardy in 1955 in making payments to Sterling Rubber, there was no interruption in deliveries to him. Mr. McEwan gave the following evidence as to the policy followed:

"Q. I notice on Exhibit 2 that outside of the first three orders, and perhaps one other, he became almost as tardy in his payments as he was before?

A. Yes.

Q. Why did you continue him on as a dealer? Why did you continue him on as a dealer?

A. It is a good reason actually. He should have been delisted at that time, but there is one reason and the only reason why we continued to sell this man, and that is that I knew he would import a low quality foreign glove, which he had been doing on other products, and until we have here in Canada a government standard of quality for surgeon's gloves, I felt it advisable to continue to sell him."

(Hearing, p. 826)

It will be noted from Mr. Gilbert's evidence, quoted above, that he said "we were practically told that unless we adhered to a definite price structure they would not supply us." Mr. McEwan's evidence was as follows:

"Q. Now, during this period from June -- I think May or June of 1955 -- when you had this discussion with Mr. Bowes and as you say temporarily reinstated him, did you have any knowledge or information about the Gilbert Company cutting prices, that is, selling at prices lower than what you had in your price list?

A. To the best of my knowledge all during this period under discussion, 1954 to 1957, this company sold consistently at prices lower than we suggested.

Q. And what, if anything, did you ever do about it?

A. I discussed with them the advisability of selling ---

Q. Discussed with whom?

A. Mr. Gilbert.

Q. Yes?

A. The advisability of selling at our suggested price. The matter was certainly discussed as being in his

interest, in our interest, and in the interest of the hospitals which use our glove."

(Hearing, pp. 826-27)

Later in his evidence, Mr. McEwan testified:

- "Q. Now, have you had more than one discussion with Mr. Gilbert or Mr. Bowes about suggested prices?
- A. We probably discussed it on more than one occasion as a matter that is part of the educational programme.
- Q. Did you provide Mr. Gilbert with price lists to guide him?
- A. Yes. They are sent out routinely by mail to all dealers in Canada.
- Q. Sent to all dealers?
- A. Yes, that is right.
- Q. As far as Gilbert is concerned -- and I will conclude with this question -- did you ever exact any promise from Gilbert or Bowes to sell at your suggested prices?
- A. No.
- Q. Did you ever threaten him with any consequences if he failed to do so?
- A. Not as far as prices were concerned.
- Q. What did you threaten him with?
- A. I threatened to take him off our list twice unless he paid his bills on time."

(Hearing, p. 846)

Mr. Gilbert was asked about the time when he had a discussion with Mr. McEwan and gave the following evidence:

- "Q. Is this correct, that some time about the date of the letter from you, you had a discussion with Mr.

McEwan and you agreed to maintain the prices he suggested?

A. Yes.

Q. And that you did maintain those prices which Mr. McEwan suggested until this investigation started?

A. That is right. I might say that there was considerable loss of business.

Q. You found that it affected your business?

A. Correct. . . ."

(Evidence, pp. 181-82)

The statement about loss of business after March 25, 1955 cannot relate to the actual sales of Sterling Rubber surgeons' gloves because the purchases of Gilbert Surgical as shown by Exhibit H-6 increased many times in 1955 over the level of 1954, viz.:

1954	-	\$	1,128.61
1955	-		11,934.06
1956	-		10,559.37
1957	-		8,816.84

Although Mr. Gilbert said in evidence in the inquiry that he had promised to adhere to the resale prices of Sterling Rubber, he said that it had not been stipulated that if he did not adhere to the suggested prices Gilbert Surgical would be refused supplies. His evidence was as follows:

"Q. Would you have liked to quote lower prices to the University Hospital [Saskatoon] ?

A. Yes, I would have, in order to be competitive in the market.

Q. But you felt you had to adhere ?

A. Yes.

Q. Why did you feel that way ?

A. Because we had given our word to Sterling we would adhere to their prices.

Q. You had given your word to whom?

A. Mr. McEwan. Of course they wouldn't want a thing like that in writing.

Q. Mr. Bowes has given evidence here: he said that back in February or March in 1955 there was some discussion between you and Mr. McEwan about being cut off. You had a discussion with Mr. McEwan at that time?

A. Yes.

Q. And was it your understanding if you did not adhere to the suggested prices you would be cut off?

A. No, there was no stipulation of that nature. They were just at that time controlling the situation so that we would be embarrassed, because of the fact that we had cut prices.

Q. What do you mean, you would be embarrassed?

A. By not being able to supply merchandise to fill the orders we had taken."

(Evidence, pp. 183-84)

The evidence quoted above related to a letter of November 28, 1956 which Mr. Gilbert wrote to the University Hospital, Saskatoon, and which reads as follows:

"Thank you for the opportunity to quote on your '57 Requirements.

Wherever we were in an uncontrolled position to quote competitively we have done so. We have even submitted an alternative to the Sterling Gloves. Though illegal, our hands are tied on this item.

However, if we could enjoy the business on the Sterling Goves, we would be quite willing to donate to the Hospital the 3 items which we sent you on approval. This would cover the Hydraulic Bed, the Kleen Air-O Tent and the Dr. Barron Food Pump.

We trust you will treat this matter as confidential."

(Serial 627)

The price which Gilbert Surgical quoted on this occasion was the resale price suggested by Sterling Rubber.

Another situation referred to by Mr. Gilbert in his evidence had to do with sales of Sterling Rubber surgeons' gloves to Toronto Western Hospital. Mr. Gilbert said that he had been selling to this hospital on a 10 per cent rebate arrangement prior to 1956 but that when the purchasing agent changed at the beginning of 1956 he had not secured any orders. However in 1957 he again succeeded in doing business with the hospital on the basis of 10 per cent rebate. Mr. Gilbert went on to state that he believed Mr. McEwan got to know of this arrangement and that shipments from Sterling Rubber were delayed. He testified:

"A. . . .

Subsequent to that for a three-week period there were no shipments of gloves. We had orders from other hospitals, and we were quite embarrassed by not being able to deliver. We called them up and asked them what the story was. They said they had some big export orders that they had to fill at that particular time, and that they were not in a position to make any shipments of gloves immediately -- and by the way, what is the story with Western Hospital? He volunteered that. We told him at the time that we were cutting prices by 10 per cent and felt that we were fully within our rights in doing it. In view of the fact that on a re-used commodity of this nature, where you can anticipate business and where there is a steady flow of merchandise, we were working on a satisfactory mark-up under those circumstances; in view of the fact you don't have to carry big stocks, it is just a flow of material and turnover in this business, and you can continue it under normal circumstances.

He put it to us this way: he would ship us the gloves we required provided we did not ship anything to the Western Hospital. Of course we agreed to that because we had no orders from the Western Hospital at the time. But it seems that the slow-down was designed in such a way that when the Western Hospital order did come in we would have no stock and be embarrassed.

Q. Was this the time you had been informed you would be getting an order from the Western Hospital?

A. Yes."

(Evidence, pp. 186-87)

Mr. McEwan filed a statement showing the time taken to fill orders of Gilbert Surgical in the period April-July, 1957, which is reproduced below:

"Schedule showing orders received from Gilbert Surgical Supply Company by Sterling Rubber Company Limited for period April 1st, 1957 to July 31st, 1957, Sterling order numbers, date shipped and number of days to complete each order.

<u>STERLING ORDER NO.</u>	<u>GILBERT ORDER NO. & DATE OF ORDER</u>	<u>DATE ORDER SHIPPED</u>	<u>NO. OF DAYS TO COMPLETE ORDER</u>
6679	3605 Apr. 23/57	Apr. 25/57	2 days
6816	3625 May 1/57	May 21/57	20 "
7007)	3636 May 6/57	May 21/57	16 "
7008)	3636 May 6/57	May 15/57	9 "
7009	3644 May 9/57	May 15/57	6 "
7186	3666 May 15/57	May 30/57	15 "
7140	3679 May 22/57	May 24/57	2 "
7322	-- June 3/57	June 6/57	3 "
7538	3745 June 13/57	June 20/57	7 "
7601	3762 June 19/57	June 24/57	5 "
7770	3790 July 2/57	July 5/57	3 "
7795	3795 July 3/57	July 8/57	5 "
8115	3853 July 25/57	July 31/57	6 "
8164	3865 July 29/57	Aug. 1/57	3 " "

(Exhibit H-5)

He also filed a similar statement for the same period covering the orders of Standard Surgical Supply Ltd., Calgary, Alberta, as follows:

"Standard Surgical Supply Co. Ltd., Calgary orders for periods April, May, June and July 1957 to STERLING RUBBER COMPANY LIMITED and covering invoices.

STANDARD ORDER NO.	DATE OF ORDER	STERLING INVOICE NO.	DATE OF STERLING INVOICE	NO. OF DAYS TO COMPLETE ORDER
946 S	4-27-57	7505	6-4-57	38
1013 S	5-6-57	7230	5-17-57	11
765 S	5-13-57	7229	5-17-57	4
789 S	6-3-57	7571	6-10-57	3
794 S	6-5-57	7771	6-21-57	16
1032 S	6-8-57	7651	6-14-57	6
1064 S	6-26-57	7915	7-2-57	6
1246 S	7-18-57	8571	8-16-57	29
1241 S	7-20-57	8731	8-29-57	40 "

(Exhibit H-14)

Mr. McEwan said that the reason for the delays in some orders during this period was because Sterling Rubber was probably three to four months behind on the production of brown milled surgeons' gloves, whereas in the case of the latex type there was normally a stock on hand and orders could be filled promptly (Hearing, pp. 834-37). Delays of even greater length occurred in the case of some export orders (Exhibit H-16).

The oral and documentary evidence given by Mr. McEwan leads to the conclusion that orders of Gilbert Surgical in the period including May, 1957 were dealt with in the same way as other orders received by the manufacturer in that period, and that there was no deliberate withholding of supplies from Gilbert Surgical by Sterling Rubber.

3. Sterling Rubber and Hyman Surgical Supply Ltd.

Hyman Surgical Supply Ltd. had been dealing in Sterling Rubber Surgeons' gloves in a very small way prior to July, 1955. Its purchases from Sterling Rubber amounted to \$96.33 in 1953 and to \$105.66 in 1954 (Exhibit H-8). It was also frequently tardy in paying its accounts to Sterling Rubber. Out of 16 accounts rendered prior to June, 1955 only 3 were paid within 30 days, the majority being outstanding more than 60 days before payment.

On July 13, 1955, University Hospital, Saskatoon invited tenders for 360 dozen Sterling surgeons' rubber gloves (gum rubber type 523), which was estimated as one year's requirements. Hyman Surgical Supply Ltd. and six other firms submitted quotations. Some quotations were made at Sterling Rubber's suggested resale prices, but Stevens & Son Ltd. quoted \$5.17, which was 10 per cent lower than the suggested resale price (Serial 152) and Hyman Surgical Supply Ltd. quoted a price somewhat lower and was awarded the contract. Hyman Surgical Supply Ltd. was apparently using an out-dated price list of Sterling Rubber which had a suggested resale price of \$5.25, while on the then current price list the suggested resale price was \$5.75.

On July 19, 1955 Hyman Surgical Supply Ltd. sent the following telegram to Sterling Rubber:

"WIRE RETURN SHIPPING DATES BY FASTEST
ROUTE RE 523 ONE GROSS SIZE SIX ONE GROSS SEVEN
AND HALF SIX DOZEN SIZE EIGHT URGENTLY REQUIRED."

(Serial 372)

Replying on July 20, 1955, Mr. McEwan of Sterling Rubber wrote:

"In answer to your telegram ordering 'Sterling' Gloves, we are consolidating our distribution and in view of the relatively small quantities you require ask that you order your requirements through one of the following,

Fisher & Burpe Ltd.,
Ingram & Bell Ltd.,
Stevens Company

Would you also place the attached orders on one of the above."

(Serial 861)

In his evidence before the Commission Mr. McEwan said that the decision to drop Hyman Surgical Supply Ltd. from the list of dealers was made as part of the general review of dealerships he was then engaged in and which has been described earlier in this report. In June, 1955 another Winnipeg dealer, Campbell & Hyman Limited, had been dropped because of small volume of purchases and has not since been reinstated. Mr. McEwan testified further that his decision in regard to Hyman Surgical Supply Ltd. was taken before he knew what dealer had been given the contract for University Hospital, Saskatoon or the quotations that had been made.

Hyman Surgical Supply Ltd. wrote to Sterling Rubber on July 21, 1955 asking Mr. McEwan to reconsider his decision and pointing out that several orders were on hand for Sterling Rubber gloves. It was stated that the firm would not buy Sterling gloves from other dealers but would seek American gloves if Sterling Rubber would not accept it as a dealer. An offer was made to buy in larger quantities and to stock Sterling gloves (Serials 377-78).

Mr. McEwan wrote, in reply, on July 25, 1955:

"Thank you for your letter of July 21st. Our decision that you were not eligible for wholesale prices was based on the fact that during 1954, you placed eleven orders for a total of $17\frac{1}{2}$ dozen surgeons gloves. This amounts to approximately $1\frac{1}{2}$ dozen per order and totalled about \$40.00 over the year.

We actually lost money on every order you placed with us.

Until such time as you can convince us that your volume warrants distributor prices our decision must stand. On my next trip west we can discuss this in detail.

However, we certainly will ship what you need to cover actual orders which you have on hand. Our credit department have been asked to pass it if your order is accompanied by a cheque to cover the order and your account which has been outstanding for about three months."

(Serial 864)

On July 26 1955, Mr. M. D. Shyba, Standard Surgical Supply Ltd., Calgary, wrote to Mr. McEwan, in part, as follows:

" . . .

By now you will no doubt have received the order from some surgical supply house for the surgeons gloves for the University Hospital, Saskatoon. The Purchasing Agent informed us that of the seven bids quoted only three stuck to the list price. We submitted a list price. The Purchasing Agent also informed us that he got better than 10% off list price on the 30 gross order. Tendering is dynamite and this sort of thing is bound to happen but we will know better next time.

. . ."

(Serial 927)

An undated, handwritten letter from Mr. McEwan to Mr. Shyba appears to be in reply and contained the following:

" . . .

Was surprised to hear four quoted below list, I wrote Kitchen on this in particular, Hyman was refused gloves last week. If you know who cut pass it on, we are getting tougher. Have yet to receive the 30 gross order but will watch for it, if Sterling got it he has to pay C. O. D.

. . . "

(Serials 965-67)

On July 27, 1955, Hyman Surgical Supply Ltd. forwarded three orders to Sterling Rubber and a cheque in payment. Two orders were for 5 dozen and 1 dozen gloves, while the third order was for 180 dozen gloves.

Mr. McEwan acknowledged the orders in a letter of July 28, 1955 in which he pointed out that the orders had been priced from an out-dated price list, and he gave the current prices. His letter also stated:

"As agreed in our previous letter we will ship your orders #948, #972 and #1019 after which no further orders will be accepted until such time as we can assure ourselves regarding wholesale quantity and credit.

Orders #948 and #972 will be forwarded shortly as they cover goods which we have in stock. However, our plant is now closed down for holidays and we do not have stocks of surgeons gum gloves. Therefore, delivery of your order #1019 may take up to six weeks or possibly longer as we have heavy export and domestic commitments. In the meantime you may be able to purchase gloves from the stocks of one of our wholesalers in Winnipeg to cover the needs of the University Hospital. If so we will cancel this order for you.

. . . "

(Serials 866-67)

Mr. McEwan also wrote to Mr. Shyba in regard to the orders received from Hyman Surgical Supply Ltd. His handwritten, undated letter contained the following:

"Just found out Hyman, Winnipeg got the University, Saskatoon order. A letter had gone to them a week ago saying we would fill actual orders which they had on hand but no more.

They just answered and enclosed a 15 gross order for University. We have written saying delivery will be 6 weeks or longer & no further orders will be shipped. This should straighten out the matter."

(Serial 968)

On August 2, 1955 Mr. E. J. Turner, Sales Manager, The J. Stevens & Son Co. Ltd., Toronto, wrote the following letter, marked confidential, to Mr. L. J. Carson of Stevens & Son Ltd., Winnipeg:

"The writer has just finished a long discussion with Mr. Tom McEwan of Sterling Rubber, relative to an awkward predicament they got into with Hyman Surgical.

Sufficient evidence has been given to Sterling to prove conclusively that Hyman have been cutting prices, especially with respect to the Saskatoon University Hospital. As a result, Tom McEwan wrote Hyman and told him that his purchases did not warrant an agency for Sterling, and they would like to consummate [sic] the agency and they would accept any unfilled orders or commitments which Hyman had providing a cheque for the long overdue balance of Sterling account, plus a cheque for the new order which was to be submitted was supplied.

Believe it or not, Hyman came through with a cheque and also a new order for half the contract at University - Saskatoon, and I earnestly hope that you got the other half of it.

Tom McEwan has no intention of filling this order on a prompt basis. He is going to hold it up for several weeks and he asked me to let you know confidentially what was going on, and I also told Tom that you would be quite willing to give Hyman a 10% discount off any of his Sterling Glove requirements, so you take it over from there for me, will you?

So, there it is my friendly. It is only going to be a matter of time before Hyman is no longer a Sterling agent. It is a delicate situation, but I told Tom that you could help him out and if you would be kind enough to do this, I'd

appreciate it very, very, much."

(Serial 149)

The following day, August 3, 1955, B. E. Dartnell of Stevens & Son Ltd., Winnipeg, wrote to that firm's Saskatoon representative:

"As you probably already know, we can, in addition to selling Seamless Rubber Gloves, Sell Sterling Rubber Gloves. As a matter of fact the other offices are going great guns on them.

I am informed today that Hyman Surgical Supply have been selling these to the Universtiy [sic] Hospital on Contract at a cut price and because of this Sterling are endeavouring now to cut them off. This leave [sic] us in the postition [sic] of selling at a fair suggested price and possibly getting some of this business. Sterling tell us that Hyman only got half of the Contract and that they hope we got the other half. I have never heard anything of this before so thought I had better check with you. Please look into the matter for me.

I am attaching a copy of the suggested re-sale price list on Sterling Gloves but should point out that the orders must be for a gross or more of the type selected. We cannot fill dozen orders at this price and would refer you to our book for small quantity orders.

Suggest that you do not upset any of your Seamless accounts but rather use Sterling to break in on account [sic] that you have not been able to sell before.

I am also sending you a Salesman's sample kit of Sterling gloves which are all numbered to correspond with the list. We shall not as yet be stocking anything except the Brown Milled (Smooth) but do not hesitate [sic] to take orders for any glove provided [sic] the quantity is right.

In the meantime Art let the University People know that we are an authorized and ligitimate [sic] Sterling Dealer and that we cann [sic] supply their requirments [sic] in prompt order. (I say this because I understand Hyman is not getting good delivery from Sterling as of now)."

(Serial 150)

In the meantime the University Hospital was in need of surgeons' gloves and was informed by Hyman Surgical Supply Ltd. that the factory would not be able to ship for at least six weeks because of previous commitments and holiday shut-down (Exhibit S-2). The purchasing agent, University Hospital, wrote to Sterling Rubber on August 3, 1955 requesting the utmost efforts to fill the order of Hyman Surgical Supply Ltd. and stating that the latter had supplied some American gloves to tide the hospital over (Exhibit S-1). Mr. McEwan replied to this request on August 5, 1955 and his letter reads, in part:

" . . .

To answer some of the questions raised in your letter, most of our distributors carry 4-6 weeks stocks for their hospitals. Such stocks I know are available in Winnipeg, Saskatoon and Calgary. The company you placed your order on does not carry stocks of 'Sterling' Gloves and for historical reasons was advised that they were no longer on a distributor basis with us, but, we would supply gloves to cover any orders which they had on hand. Yours, apparently, was one of these orders and we are endeavoring to ship gloves to this company to complete your order and fulfil our agreement.

We have had a tremendous increase in business this year, 'Sterling' Gloves are now used by more hospitals than all other brands combined. You are using the most popular glove and we are behind on orders due to the increase in demand, plant holidays and the extreme high temperatures in June and July which set back production. We must in fairness give previous orders preference, however, we shall do our utmost to get gloves to you.

. . ."

(Exhibit S-1)

Although sales of surgeons' rubber gloves by Sterling Rubber in Canada increased by more than 20 per cent in 1955 compared with 1954, the volume of such sales in 1955 was more than 10 per cent lower than in 1950.

On the same day Mr. McEwan wrote to Hyman Surgical Supply Ltd.:

"This will acknowledge your letter of August 3rd and attached cheque No. 5733 in the amount of \$773.60.

Your order No. 1019 will be shipped when gloves are available, at the present time we are behind on production

due to plant holidays and the extreme heat in June and July. As stated previously, we will fill the orders which you had before being advised that you were not eligible to purchase our gloves on a distributor basis. Therefore, we will ship you the further quantity required to complete the University Hospital, Saskatoon order, or 180 dozen at Wholesale Price on the date of shipment. Your cheque to cover this quantity should be attached to your order.

This will fulfil what we agreed to do, after which no further gloves can be supplied until we have reason to believe a distributor basis is warranted.

Will be in the west in a few months and will investigate and discuss the matter with you."

(Serial 869)

Later in the month University Hospital, Saskatoon placed an order with Stevens & Son Ltd. for some Sterling surgeons' gloves of the type included in the contract with Hyman Surgical Supply Ltd. Stevens & Son Ltd. wrote to Mr. McEwan on August 19, 1955 stating that quick delivery had been promised and "in this respect, we shall have to rely upon you since we have not been stocking the No. 523" (Serials 153-153A). The letter also stated that the order had been received "at the correct price". On August 22, 1955, Stevens & Son Ltd. wrote University Hospital:

"May we express our sincere appreciation for your order of August 18, 1955 No. 2914 calling for #523 Sterling Surgeons Gloves.

Some of the sizes there on [sic], we were short of but we have been promised immediate delivery of these by the factory and we shall ship your order complete within the next week.

We shall endeavour to provide you with fast delivery on all orders received and you can assure of an honest effort to warrant the confidence you have placed in us.

We shall look forward to receiving the balance of this contract after you have been assured of satisfaction from ourselves."

(Serial 154)

Mr. McEwan informed Mr. Shyba of Standard Surgical Supply Ltd., Calgary, of these developments in an undated, handwritten letter:

"To keep you up to date on the University Hospital, Saskatoon situation. We still have not shipped gloves to the dealer who got the order. Because of this the hospital placed an order for about 1/4 of the quantity on a Winnipeg dealer at our suggested prices.

We are doing our best Martin and it appears we are having some success. It shows we are just not talking but are backing up the dealers who are working with us.

. . . "

(Serials 962-64)

Mr. McEwan gave the following explanation for the filling of an order from Stevens & Son Ltd. at a time when the order from Hyman Surgical Supply Ltd. was unfilled:

- "Q. Do you know how he was able to fill it, whether partly from stock and partly from your factory?
- A. I would assume it would be partly stock and partly from us.
- Q. How were you able to supply Stevens any more promptly than you were to supply Hyman?
- A. All things being equal, Stevens would receive preference on delivery.
- Q. Why?
- A. Well, for one thing, Hyman was no longer a dealer of ours.
- Q. Was Stevens a small dealer?
- A. No.
- Q. Or a small purchaser from you, or a large one?
- A. Stevens is a large company which is very important to us. They buy in large quantities and steady quantities, and we know that hospitals are depending on them on a continuous basis for supplies of gloves,

as against comparing that to a dealer such as Hyman whose purchases were so low as to indicate that no hospital was depending on that dealer for a source of supply of gloves.

Q. As a matter of fact, how many branches have Stevens that are representatives of yours in Canada, or were at that time?

A. Five, I believe it was.

Q. And they were located across Canada, or principally in the west?

A. Toronto to the West Coast.

Q. You say they were substantial purchasers?

A. Yes."

(Hearing, pp. 869-70)

On August 22, 1955 Hyman Surgical Supply Ltd. sent a telegram to Sterling Rubber asking when the order for University Hospital would be shipped and received a reply that Sterling Rubber expected to ship the order by September 9 (Serials 389-91). Although Sterling Rubber returned one order from Hyman Surgical Supply Ltd. in December, 1955, other orders were filled, and in a letter of January 11, 1956, Mr. McEwan wrote:

" . . .

In looking over the file we agreed to supply you with gloves to cover the University Hospital contract totalling 360 dozen. Including the subject order we have shipped 336 dozen and there is now a balance of 2 gross."

(Serial 879)

As previously mentioned, Hyman Surgical Supply Ltd. went out of business in 1956.

4. Sterling Rubber and Sterling Surgical Supply Company

Sterling Surgical Supply Company, Edmonton is the trade name under which Mr. C. W. Kitchen carries on business in Edmonton. Mr. Kitchen had operated under the same name for some years in Saskatoon but in 1956 this business had been sold and Mr. Kitchen started a similar business in Edmonton.

Although Mr. Kitchen had made sales of Sterling gloves in 1954 to an extent which brought praise from the manufacturer (Serial 331), his credit standing with Sterling Rubber became such that from the beginning of 1955 he was sold on a C.O.D. basis.

In January, 1955 Mr. Shyba of Standard Surgical Supply Ltd. wrote to Mr. McEwan about Sterling Rubber gloves being sold to hospitals at a considerable discount and that Standard Surgical had been meeting the prices in some cases. Mr. Shyba referred to a price of \$4.40 to the Royal Alexandra Hospital, Edmonton, which had not been met and which he said had been given by a supplier not calling regularly in the Edmonton area (Serials 327-28).

In giving evidence in the inquiry Mr. Kitchen produced an undated, handwritten letter from Mr. McEwan which he stated he had received in an envelope which appeared to bear the post date 7/6/55 which he interpreted as June 7, 1955. This letter reads as follows:

"As you know from our telephone conversation at the time of my trip west, we discourage price cutting.

Have been informed that there is a tender out from the University Hospital in Saskatoon on which dealers have been informed list price should be quoted.

The price cutting out west has almost cleared up, although I have heard of some in Edmonton. Will look into this and take steps to discourage whoever is cutting by long delays in shipments.

. . . "

(Exhibit E-1)

On June 22, 1955 Mr. Shyba wrote again to Mr. McEwan and made the following reference to purchases of gloves by the Royal Alexandra Hospital:

" . . .

. . . Also, I have been informed by the Purchasing Agent at the Royal Alexandra Hospital in Edmonton that he is getting gloves at a discount and has placed an order with Sterling Surgical for seven gross. The Purchasing Agent tells me that these gloves were in stock in Saskatoon and that is why he has offered him a price. At the present time there is very little that can be verified as it is possible that he is shipping from stock and can afford to give a discount. So far we have maintained your list price and everything is working out very satisfactorily.

. . . "

(Serial 366)

On August 1, 1956, Sterling Rubber wrote to Sterling Surgical Supply Company, Edmonton as follows:

"Your credit with our company has not been satisfactory for some time now and, as you have sold your business in Saskatoon and starting a new one in Edmonton, it has been decided that you should be removed from our list of surgical supply wholesalers.

The writer expects to be in Edmonton in October at which time we can discuss this matter further. In the meantime you can arrange to get the 'Sterling' Gloves you require through either:

Ingram & Bell Ltd.,
Stevens Co's
Fisher & Burpe Ltd. "

(Exhibit E-5)

Mr. McEwan gave the following reason for removing Mr. Kitchen from the list of Sterling Rubber dealers after he had moved to Edmonton:

"Q. Now, why did you remove him?

A. Well, in the early survey that I made, I had decided that this was the type of dealer that should be taken off our list, but had decided not to do so because he was the only dealer in the Province of Saskatchewan, and it was our policy to keep wholesale stocks in as

many areas as possible. . . ."

(Hearing, p. 880)

Mr. McEwan went on to say that Sterling Rubber had three other dealers in the city of Edmonton. Later in his evidence Mr. McEwan said that because of the similarity of names and the manner in which the business of Sterling Surgical Supply Company was conducted he did not consider that it was desirable for this firm to represent Sterling Rubber. In regard to the cutting of prices by Sterling Surgical Supply Company Mr. McEwan testified as follows:

"Q. Now, during the period from the time you took over the Directorship of Sales, up until August 1st, 1956, had you any knowledge or information that he was cutting prices?

A. The information I had that he was cutting prices was all during that period.

Q. Did you ever remonstrate with him for so doing?

A. I certainly told him that he could not afford to sell below our suggested price. Probably one of the reasons he could not pay his bills was that he was not getting the margin of profit that he required in order to operate.

Q. Did you ever threaten to cut him off if he sold below your suggested prices?

A. No. If I had, he would have been cut off in 1954.

Q. Did you ever threaten to slow up deliveries to him if he did not adhere to your prices?

A. No. I have only talked to that man twice in short telephone conversations.

Q. You have never met him personally?

A. I have never met him personally."

(Hearing, p. 882)

On August 9, 1956 Mr. E. J. Turner of The J. Stevens & Son Co. Ltd. wrote to The Stevens Alberta Co. Ltd. as follows:

"Enclosed please find a copy of a letter written to Sterling Surgical at Edmonton by Sterling Rubber Co. of Guelph.

This is further evidence of the support which Sterling are giving us, and Andy, I would like to know as soon as possible what happened to the contract for Sterling Gloves in Edmonton.

If there is any price cutting going on out there keep us abreast of it, because Sterling are quite willing to deal with the offenders in a manner exactly as outlined in the letter to Sterling Surgical."

(Serial 276)

On the same day Mr. Turner wrote to Mr. McEwan, Sterling Rubber:

"Thanks a million for your two recent letters.

You are to be admired, my friendly, for the action which you are taking in clearing up the distribution of Sterling Gloves, and I can assure you that you will get even greater support than you have in the past from the ethical houses, once you have eliminated some of these nuisance factors which are scattered across the country."

(Serial 277)

In regard to these letters Mr. McEwan gave the following evidence:

"Q. . . . Now, what letter would he be referring to?

A. Possibly he has had a copy or has read a copy of our letter to Sterling Surgical, Edmonton, removing them from our dealership.

Q. That is the letter set out on page 92 dated August 1st, 1956?

A. Yes.

Q. The inference from that paragraph that Mr. Turner

has drawn is that you cut Sterling Surgical off because of price cutting. Was that true or not true?

- A. That was not the reason he was cut off, but it was the impression that I wanted Mr. Turner to have.
- Q. You wanted Mr. Turner to have that impression, but it was not the real reason he was cut off?
- A. No, but the impression was given to Mr. Turner; it was to placate them, because they had complaints of this price cutting. If I had not placated that dealer, then they would immediately have stopped selling Sterling gloves and turned to an imported brand.
- Q. And I take it from the excerpt from the next letter to you from Turner, that Mr. Turner definitely had the impression that you had cut him off because of price cutting?
- A. Yes.
- Q. He says:
- 'You are to be admired, my friendly, for the action which you are taking in clearing up the distribution of Sterling gloves, and I can assure you that you will get even greater support than you have in the past from the ethical houses, once you have eliminated some of these nuisance factors which are scattered across the country.'
- Now, as a matter of fact, had the Stevens Company cut prices from time to time?
- A. They had on occasion, yes.
- Q. Is there any basis for the view expressed by Mr. Turner in that letter to you -- any truthful basis?
- A. Which is that?
- Q. That is the short letter, an extract from which I just read?
- A. You mean that we would get greater support?
- Q. No, that you cut off his dealership because he cut prices?

A. No.

Q. There is no basis for that?

A. That is incorrect.

Q. I take it you had led Mr. Turner to believe that?

A. That is what I wanted him to believe as our reason, yes."

(Hearing, pp. 884-86)

5. Sterling Rubber and Imperial Surgical Company,
Winnipeg

In the description of Imperial Surgical Company given at the beginning of this report it is stated that the firm is the surgical division of Imperial Optical Company Limited. According to the evidence of Mr. McEwan another division of the latter company is Safety Supply Company, which is an important customer of Sterling Rubber for industrial gloves. Mr. McEwan said that when he completed the review of Sterling Rubber dealers in 1955 he had decided to remove Imperial Surgical Company, Winnipeg from the list because of the small volume of purchases (Hearing, pp. 895-899). The following amounts were shown in Exhibit H-10 as the purchases by Imperial Surgical Company from Sterling Rubber during the years 1953 to 1957:

1953	-	\$	28.88
1954	-		Nil
1955	-		Nil
1956	-		4,274.44
1957	-		258.72

Although Mr. McEwan stated that he had made the decision to discontinue Imperial Surgical Company, Winnipeg, as a dealer in 1955 he said that he took no steps to inform the firm of his decision because he wished to deal with the matter in a personal way so as to maintain the goodwill of the parent company and not affect the relationship with respect to industrial products (Hearing, p. 899).

On February 2, 1956 Imperial Surgical Company, Winnipeg wrote to Sterling Rubber requesting price lists and descriptive material on surgeons' rubber gloves (Serial 429). Mr. McEwan replied, on February 3, 1956, as follows:

"Thank you for your letter of Feb. 2nd, the writer expects to fly west in one or two months and suggest we discuss the matter of distribution and sales at that time. New products will be introduced about the same time."

(Serial 430)

Mr. McEwan said in evidence before the Commission that he intended this reply to indicate that the dealership was in question and that nothing should be done by Imperial Surgical Company in regard to Sterling Rubber products. However, Mr. McEwan said that the manager of Imperial Surgical Company, Winnipeg, was relatively inexperienced in the surgical supply business and may not have understood his meaning (Hearing, p. 899).

About the beginning of July, 1956, the Royal Alexandra Hospital, Edmonton, invited quotations to supply 150 gross of Sterling surgeons' gloves, No. 523, over a six months' period.

On July 4, 1956, The Stevens Alberta Co. Ltd., Calgary, wrote to the affiliated company in Toronto as follows:

"We have a problem here which is a repeat of an old one namely prices on Sterling Gloves.

Jones has sent in a quotation request from one of the Edmonton Hospitals, for a price on 150 gross pair to be delivered over a period of six months. The gloves he is interested in are the #523 Pure Gum Firm Grip Finish, and on which Sterling have a suggested price to Public Hospitals of \$5.95 per dozen in lots of twelve dozen or more.

Our understanding on Sterling prices is that this is the price we are to use on any quantity over this amount, but friend Jones advises that our local opposition is supplying at \$5.50 per dozen and claims to have seen an invoice for goods in transit for this amount while at the hospital in question.

At one time Mr. McNichol investigated a previous complaint of this nature and advised us that our information was incorrect.

Our problem is this, can we take a chance and meet the price of \$5.50 per dozen or even cut it to \$5.45 per dozen, assuming that the information Jones has given us is correct.

Would appreciate your reply to arrive here before July 12th, at which time we are to make our quotation."

(Serial 270)

Mr. Turner of The J. Stevens & Son Ltd., Toronto, replied on July 6, 1956. The first paragraph of his letter reads as follows:

"Since receiving your letter of the 4th, on the subject of Sterling Gloves, I have been in touch with Tom McEwan of Sterling Rubber and the consensus [sic] of opinion is to the effect that you should certainly hold the price.

. . ."

(Serial 272)

The Stevens Alberta Co. Ltd. answered Mr. Turner's letter on July 9, 1956 and stated that the regular price was being quoted (Serial 273). On July 13, 1956, Mr. Turner wrote to Mr. McEwan of Sterling Rubber, as follows:

"With further reference to our discussion in connection with the Edmonton contract for Sterling Rubber gloves, I am herewith attaching a copy of a letter dated July 9th received from our Calgary Manager which is self explanatory.

I know you will be pleased to see we have held the line Tom and I hope you can convince everyone else to do likewise."

(Serial 274)

The Royal Alexandra Hospital, Edmonton, issued a purchase order for 150 gross No. 523 Sterling surgeons' gloves at \$5.25 per dozen to Imperial Surgical Company, Winnipeg, on July 19, 1956 (Exhibit E-6). According to the acknowledgment Imperial Surgical Company had immediately written to Sterling Rubber to inquire as to delivery dates on supplies required at once. On July 24, 1956 Imperial Surgical Company wrote to the Royal Alexandra Hospital stating that Sterling Rubber had indicated that 26 gross of No. 523 glove would be shipped later that week (Exhibit E-6).

On July 31, 1956, Mr. McEwan wrote to Mr. Turner of The J. Stevens & Son Co. Ltd., Toronto, as follows:

"Just returned from a weeks holidays & found Imperial Surgical, Winnipeg sent us a rush order for a quantity of gloves. This is unusual as they seldom buy more than 12 dozen in a year. Their associate company Safety Supply Co. do buy many industrial gloves.

Could you find out if Imperial have cut any prices so that I can take action, have not had any report on them and cannot start loosing [sic] further orders until I have something definite to go on."

(Serial 278)

It will be recalled that in connection with the dropping of Sterling Surgical Supply Company, Edmonton, as a dealer on August 1, 1956, Mr. McEwan had shown Mr. Turner a copy of his letter terminating the dealership and had wanted Mr. Turner to believe that Sterling Rubber had taken the action because of price cutting by the dealer. Mr. Turner wrote to The Stevens Alberta Co. Ltd. on August 9, 1956 to inquire about the contract for Sterling gloves in Edmonton. His letter is quoted above in connection with Sterling Surgical Supply Company and it will be noted that Mr. Turner wrote:

" . . .

If there is any price cutting going on out there keep us abreast of it, because Sterling are quite willing to deal with the offenders in a manner exactly as outlined in the letter to Sterling Surgical."

(Serial 276)

While Mr. McEwan said in his evidence before the Commission that he suspected that Imperial Surgical Company had cut prices when he wrote to Mr. Turner on July 31, he did not establish the fact until later (Hearing, p. 903). The evidence in the inquiry indicates that Imperial Surgical Company initially ordered 50 gross of gloves from Sterling Rubber which were shipped in a short time: 26 gross were delivered to the hospital on August 7 and 24 gross on September 4. On August 14, Imperial Surgical Company placed a second order for 50 gross with Sterling Rubber. On August 27, 1956, Imperial Surgical Company wrote two letters to the Royal Alexandra Hospital, Edmonton. The first letter reads as follows:

"We have just had a telephone call from Mr. Tom McEwan, Sales Manager of the Sterling Rubber Company, with regards to the the [sic] glove contract we obtained from you recently.

It seems that several of the dealers in Edmonton have complained about our price of \$5.25 and have requested the Sterling Rubber Company to curtail further shipments to us. As a result, we are unable to fulfil the balance of your order at the above-mentioned price.

Unfortunately, we are a victim of circumstance as it has always been our policy to abide the suggested re-sale price. However, we have found it necessary to adjust our price to meet other competitive [sic] bids which have been submitted to various hospitals in the district.

We were wondering if you would be in a position to amend the balance of your order at a revised price of five dollars and eighty cents (\$5.80) per dozen, f. o. b. hospital.

We sincerely regret this inconvenience, however trust you will understand our situation in this respect.

We remain, "

(Exhibit E-6)

The second letter:

"Further to my letter regarding the discussion we had with Mr. Tom McEwan, we wish to advise that we presently have on hand approximately 25 gross of the #520 Sterling Rubber Gloves in the various sizes you previously requested.

We are pleased to say that we could offer you this quantity at the \$5.25 per dozen price. However, the remaining portion of your outstanding order (in other words, 100 gross) would have to be shipped at the \$5.80 per dozen price.

We would appreciate your comments on the above at your earliest convenience.

Thanking you, we remain, "

(Exhibit E-6)

Mr. McEwan said in his evidence before the Commission that he had telephoned Mr. Laurin of Imperial Surgical Company by long distance. His evidence included the following:

"Q. What threats, if any, did you make to Mr. Laurin?

A. I made no threats to Mr. Laurin. I just presented the facts to him and told him that he was doing himself an injustice and doing his company an injustice by selling at that price; that he had all the dealers in that area mad at us, and the reaction to that would be to stop selling our glove and sell imported American gloves. It was going to hurt us, and that their own relationship with other dealers in that area was not good either, and left it up to him to decide what to do.

Q. Than, in any event, after he had the telephone call from you, he wrote to the hospital and he says in the second paragraph at the top of page 100:

'It seems that several of the dealers in Edmonton have complained about our price . . .'

is that what you told him?

A. Yes, I told him other dealers had complained.

Q. Was it true?

A. Yes, it was true.

Q. ' . . . and have requested the Sterling Rubber Company to curtail further shipments to us.'

Now, did you ever mention curtailing shipments direct to Laurin?

A. No.

Q. Did some of your dealers request you to curtail shipments to Imperial, as he says?

A. That is what they would like us to have done.

Q. That is what they would have liked you to have done. Did you intimate to anyone that you would do it?

A. Probably, if they complained.

Q. Did you ever intimate that to Laurin?

A. Not to Laurin, no."

(Hearing, pp. 903-05)

On September 7, 1956 Mr. McEwan wrote to Imperial Surgical Company, Winnipeg, pointing out that the Royal Alexandra Hospital used type No. 523 rather than No. 520. This letter had the following postscript:

"P.S. Suggest you do not make any commitment to supply our gloves until I am in Winnipeg and we can discuss the matter."

(Serial 503)

Mr. Turner, The J. Stevens & Son Co. Ltd., Toronto, wrote to the affiliated company in Winnipeg on September 7, 1956 as follows:

"During my absence your Confidential letter regarding Imperial in Winnipeg was received and since I have only now returned to the office I want to take this opportunity of acknowledging same.

Imperial endeavoured to obtain Sterling Gloves for a Hospital contract in Edmonton. Of course, they underquote everyone else by cutting the price but fortunately [sic], they were not a recognized or established Surgical Glove dealer, consequently, I am afraid they are going to run into trouble with respect to delivery.

That is the type of co-operation we like to get from a manufacturer, and naturally, everyone is pleased and Andy is just sitting back waiting to see what is going to happen as we have kept him conversant with every move made thus far."

(Serial 280)

Imperial Surgical Company wrote again to the Royal Alexandra Hospital on September 22, 1956 about revising the contract prices for gloves for the remainder of the order, as follows:

"Further to our letter of August 27, 1956, we would ask you to please advise, at your earliest convenience, if it would be possible for us to ship the remaining portion of your purchase order #7291 at the price of \$5.80 per dozen on the #520 Sterling Pure Gum Smooth-finish Rubber Gloves, and \$5.95 on the #523 Sterling Pure Gum Finger-grip Gloves.

As mentioned previously, it seems that several of the dealers in Edmonton have complained about our price of \$5.25 and have requested the Sterling Rubber Company to curtail further shipments to us. Until we can get a re-confirmed order from you at the above-mentioned prices we will be unable to complete the remaining portion of your order.

We would appreciate hearing from you at your earliest convenience as we have an appointment with Mr. Tom McEwan, the general manager of the Sterling Rubber Company, in one week's time. At this time we would like to discuss this matter with him as we would most certainly like to continue supplying you with Sterling Rubber Gloves.

. . . "

(Exhibit E-6)

The meeting with Mr. McEwan apparently took place some time prior to October 23, 1956 because Imperial Surgical Company wrote to Mr. McEwan on that day:

"Further to our recent conversation we would ask you to please refer to our outstanding purchase orders, namely #37586, dated August 1, 1956; #37636, dated August 14, 1956; #37691, dated August 24, 1956; and #37705, dated August 30, 1956.

Under the circumstances that we are unable to complete the outstanding portion of the contract with the Royal Alexandra Hospital, Edmonton, it is necessary for us to cancel our purchase order #37636, dated August 14, which covers fifty gross (50) of #523 Brown Mill Surgeons Gloves.

Trusting you will understanding our situation in this respect, we remain, "

(Serial 517)

Mr. Laurin, Imperial Surgican Company, gave the following evidence in the inquiry in regard to the cancellation of the order placed on August 14, 1956:

"A. It was a case where we obtained a contract from the Royal Alexandra Hospital; I am not certain now of the quantity involved, but I believe it was 150 gross -- we placed the order with the factory. As a result when I saw Mr. McEwan in Edmonton -- further to this letter he says, 'Suggest you do not make any commitment to supply our gloves' -- apparently there was some controversy out there with regard to other representatives stating that we had undercut the price. We were not the only ones cutting the price on this particular contract. That is the circumstance that arose at that time.

Q. You did in fact sell below the suggested price?

A. Yes, sir.

Q. Why did you tell him to cancel the order?

A. Well, as a result we felt under the circumstances that we had another glove, the Velvetex line; we thought we would rather get an exclusive on Velvetex, which we were going after from the States through Dr. Soltermann.

Q. Was there any suggestion you would not be supplied by Sterling?

A. I would not say that -- they more or less said that shipments would be held up.

Q. McEwan told you shipments would be held up?

A. Yes.

Q. Because you had cut prices?

A. In so many words, he did say that, yes. We had cut the price and they were looking into it. He was actually trying to protect ourselves. We would not make much money on these gloves, unfortunately, and there was a lot of price cutting on this particular contract, and we did cut the price in this particular case.

- Q. If McEwan had not approached you would you have filled that order in the regular way?
- A. We supplied, I believe, 100 gross; and in the meantime at that convention in Edmonton we obtained the Velvetex line, and we approached Mr. Heathcoate at the Royal Alexandra Hospital with that line of gloves also. It was a split contract; they wanted to take deliveries at intermediate times. We discussed it thoroughly, and we felt we would stock this Velvetex glove, and keep that in stock rather than Sterling. It was not a case where we could ship the entire shipment at one time. That is why we cancelled -- now whether that cancellation entails that particular order, I am not sure. I would have to check our files.
- Q. But your understanding from Mr. McEwan was that if you went ahead and fulfilled that tender, you would find your deliveries were slow?
- A. That is right."

(Evidence, pp. 689-91)

In his evidence before the Commission Mr. McEwan said that Sterling Rubber would have been prepared to supply Imperial Surgical Company with the gloves necessary to fill the contract with the Royal Alexandra Hospital if Imperial Surgical Company had continued its orders. The second order which was placed, however, remained unfilled from August 14 to October 23, 1956. Mr. McEwan said, in evidence before the Commission, that while he did not recall the exact details of his conversation with Mr. Laurin of Imperial Surgical Company, he would probably have told him at that time that it would take six weeks to fill an order because Sterling Rubber was well behind on deliveries. His evidence included the following:

- "Q. What I put to you now is, what if anything was said to Mr. Laurin about delaying shipments by reason of cutting prices?
- A. Nothing for that reason.
- Q. What reason was assigned for any delay?
- A. The previous orders that we had in."

(Hearing, p. 918)

Mr. McEwan also gave evidence that in the meeting he had with Mr. Laurin of Imperial Surgical Company he did not carry out his previous decision to terminate the dealership, and Imperial Surgical Company has continued to be recognized as a Sterling Rubber dealer although not buying in any quantity. This course was followed in order not to jeopardize relationship with the associated company (Hearing, p. 911).

In January, 1957, Mr. Shyba of Standard Surgical Supply Ltd., Calgary, wrote to Mr. McEwan that Imperial Surgical Company were offering Velvetex gloves at \$5.35 and asked if he could explain how they could be sold at this price profitably (Serial 535). Mr. McEwan replied to Mr. Shyba's letter on January 23, 1957 and wrote:

" . . .

As far as Imperial are concerned, we know from experience, they will sell gloves on a 5% mark-up, or at a loss, but they do not seem to appreciate the fact. They must have ordered some Perry Gloves when we had our battle with them. . . .

. . . "

(Serials 541-42)

In his evidence before the Commission Mr. McEwan gave the following explanation of his letter:

"Q. . . .

What do you mean by the expression 'our battle'?

A. Well, we gave some dealers the impression that we had caused -- how should I put it, that we were exerting some pressure on them and got into a battle with them. That is the impression I wanted this other dealer to continue to have."

(Hearing, p. 940)

6. Sterling Rubber and Allen & Hanburys Company Ltd.

Although Allen & Hanburys Company Ltd. had been recognized as a dealer by Sterling Rubber at least as early as 1954 (in April, 1954 it had been furnished with price lists and descriptive literature by Sterling Rubber (Serial 302)), its purchases from Sterling Rubber

amounted to \$21.45 in 1954, \$17.19 in 1955, \$10.30 in 1956 (Exhibit H-12). No purchases were made in 1957.

The University Hospital, Saskatoon was opened for patients in January, 1955. For a period prior to November, 1956, Allen & Hanburys Company Ltd. had supplied University Hospital with a quantity of surgeons' gloves manufactured in Great Britain, but these had not proved satisfactory. On November 16, 1956 University Hospital, Saskatoon, invited quotations on various supplies which would be required during 1957, including approximately 1,388 dozen pairs of surgeons' rubber gloves "similar to Sterling Rubber Company #523" (Exhibit S-5).

The documentary and oral evidence in the inquiry indicate that the following quotations were submitted for the supply of surgeons' gloves:

Allen & Hanburys Company Ltd. . .	\$5.25 later revised to \$5.95
Stevens & Son Ltd.	\$5.95
Ingram & Bell Limited	\$5.95
Fisher & Burpe, Limited	\$5.95
Campbell & Hyman Limited	offered Wilco brand gloves @ \$6.50
Imperial Surgical Company	\$5.95
Gilbert Surgical Supply Company . .	
Limited	\$5.95
Down Bros. & Mayer & Phelps Ltd.	unable to quote on gloves
Standard Surgical Supply Ltd. . . .	\$5.95
Greville & Son Ltd.	unable to quote on gloves
Sterling Surgical Supply Company	
Limited	" " " " "
G. H. Woods (Saskatoon)	offered Veedip brand British gloves @ \$5.75

The letter of Gilbert Surgical Supply Company Limited of November 28, 1956 (Serial 627) which accompanied its quotation for the supply of gloves has been quoted earlier in this chapter in the section reviewing the evidence relating to that dealer. It will be recalled that Gilbert Surgical Supply Company Limited quoted the resale price suggested by Sterling Rubber but offered to donate to the hospital certain items of equipment.

Ingram & Bell Limited had supplied Sterling gloves to University Hospital, Saskatoon, during 1956 at a price of \$5.50 as a result of tendering on an invitation issued by the hospital on February 1, 1956. Ingram & Bell Limited had originally offered a price of \$5.25 but this price was amended on February 6, 1956 in the following letter to the hospital:

"On February 1st you sent us a request to supply approximately 500 dozen Surgeon's Rubber Gloves, Sterling Rubber No. 523 and we find that these were quoted to you on February 2nd at \$5.25 per dozen.

It is evident that, in quoting these, we overlooked the fact that the Sterling Rubber Company made an increase in prices during January of 1956, and we would like to request that our quotation to cover these should be amended to a price of \$5.50 per dozen - F.O.B. Winnipeg.

We do regret very much this error in quoting."

(Serial 240)

In its price list of January 3, 1956 Sterling Rubber changed the wholesale price of No. 523 glove to \$4.25 for 36 dozen or more from the previous single price of \$4.10, and its suggested hospital price to \$5.95 from the previous suggested price of \$5.75. On February 13, 1956, Ingram & Bell Limited further amended its quotation to the hospital to \$5.50 f.o.b. Saskatoon (Serial 241).

Evidence given in the inquiry by the Purchasing Agent University Hospital, Saskatoon, was that there were no delays in filling orders for Sterling gloves placed with Ingram & Bell Limited but he got an impression from the salesman of Ingram & Bell Limited that he could not expect the same price on a future contract. As indicated above, Ingram & Bell Limited quoted the suggested resale price of Sterling Rubber in responding to the hospital's invitation of November, 1956. The following comment on the quotation is made in an inter-office letter of Ingram & Bell Limited, dated November 30, 1956:

" . . .

The gloves are again on the yearly quote list, and I have quoted for these but, of course, we are unable to maintain the contract price for this year's supply. . . .

. . . "

(Serial 229)

Allen & Hanburys Company Ltd. submitted its tender to University Hospital, Saskatoon with the following letter, dated November 30, 1956:

"We have pleasure in returning to you your quotation for supplies for 1957. We prepared this quotation

very carefully indeed and hope that some of the prices may prove acceptable to you.

Under separate cover we are forwarding to you samples of Hypodermic Needles, Nelaton Catheters, Foley Catheters etc. so that you may make a comparison of the products you have in use. We would particularly stress the A & H Knife Blades which enjoy a very large sale in hospitals throughout Canada and many of these hospitals have large contracts with us.

We now come to the question of gloves. Considerable discussion has taken place at a very high level on these gloves and we ourselves have had much correspondence with you. We feel extremely badly about the way we have let you down in connection with these gloves. We have quoted you for Sterling Gloves No. 523 at a price of \$5.25 a dozen which is the same as the price of the British manufactured glove. We hope that it will be possible for you to purchase at least some of your years supplies of Sterling Gloves from us at this price. We are still actively engaged in finding a British made glove which would be suitable for your use and if possible even better than the Sterling Glove. However this takes a little time and in the meantime, we feel that we should like to offer you the Sterling Gloves at a competitive price which we have done on the quotation."

(Serial 977, Exhibit S-4)

Shortly afterwards, Allen & Hanburys Company Ltd. received the following letter, dated December 4, 1956, from Sterling Rubber:

"Due to the world situation we have felt an unusually heavy demand for gloves from our established customers. Until the situation is a little clearer we should not take on new accounts as we might not be able to fulfil our present obligations.

I will be in Toronto within two weeks and we can discuss this further."

(Serials 989, 519)

Allen & Hanburys Company Ltd. replied on December 5, 1956:

"On receipt of your letter dated December 4th, I took the liberty of phoning your office but unfortunately you were away for today. I spoke with Mr. Amos and explained the position we were in regarding a large quotation which we had sent to one of our customers for your gloves on the strength of our two previous conversations.

We very much appreciate that the world situation does have a considerable effect upon the rubber supplies of the manufacturers.

I should regard it as a privilege if you could phone me on your return to your office so that we can discuss this matter a little further, as having committed ourselves on this quotation we shall obviously have to communicate with our customer if you are not in a position to meet any orders that may result.

I should be very pleased indeed to see you when you are in Toronto next and discuss this whole matter, but in the meantime I feel sure that you will appreciate that it is in our mutual interests to find out what action we must take over this one large quotation which has already been sent to our customer."

(Serial 988)

On December 7, 1956 Allen & Hanburys Company Ltd. sent the following letter to University Hospital, Saskatoon:

"Further to my letter dated November 30th and in particular the question of Sterling Gloves No. 523. We have had certain conversations with the manufacturers of these gloves and they have somewhat changed their price structure on these gloves. Therefore it is very much regretted that we ask you to amend our quotation to read \$5.95 per dozen and not \$5.25 per dozen as originally quoted.

We very much regret the confusion that has occurred and the inconvenience that has been caused, but we can assure you that the enforced change of price is virtually beyond our control.

We are still actively investigating a suitable British made glove and have in fact received advise [sic] that samples of a new British made glove are been [sic] sent to us. We propose to pass these on to you and ask you to

try them and possibly you may find that they are an improvement on the other ones."

(Serial 976, Exhibit S-4)

Mr. Thomas of Allen & Hanburys Company Ltd. gave the following evidence in the inquiry in regard to a telephone conversation with Mr. McEwan of Sterling Rubber:

"Q. You recall having phoned him. What was the nature of the conversation with Mr. McEwan?

A. The nature of the conversation with Mr. McEwan was concerning these two letters here virtually; I was thoroughly dissatisfied and disgusted at learning that they were not prepared to guarantee supplies of gloves to us for a customer for whom we had committed ourselves in a quotation. There was a good deal of conversation over a fairly wide range --

Q. If I may go back to the letter I started to read a while ago -- 976, dated December 7, the first paragraph of which I started to read:

'Further to my letter dated November 30th and in particular the question of Sterling gloves No. 523. We have had certain conversations with the manufacturers of these gloves and they have somewhat changed their price structure on these gloves. Therefore it is very much regretted that we ask you to amend our quotation to read \$5.95 per dozen and not \$5.25 per dozen as originally quoted.'

A. Correct.

Q. Why did you change your price to \$5.95?

A. For the reason that it was intimated to me -- it was only intimated -- I drew this conclusion, that if we persisted in our quotation of \$5.25 a dozen to the University Hospital at Saskatoon we would not obtain supplies.

Q. And did you receive that intimation in the telephone conversation with Mr. McEwan?

A. In the telephone conversation with Mr. McEwan.

That definitely confirms that I did speak to him -- I am sorry I forgot it. I definitely got that impression. It is true to say that I don't think it was ever said in so many words, that Allen and Hanburys would be refused supplies, but constant reference was made to the world situation and demand for gloves. I pointed out to Mr. McEwan during the conversation that we were not creating an extra demand, we were simply regaining for them a contract which they had lost the previous year to us. The previous year we supplied British made rubber gloves to the University Hospital. Unfortunately the quality wouldn't stand up, and Mr. Elliott was forced to discontinue the contract and go back to Sterling's gloves No. 523, but he did promise at that time to give us the opportunity to quote again, which as you see we did. If it is of any interest to you to know the reason which prompted me to quote \$5.25 --?

Q. Yes?

A. We felt we had let the University Hospital down rather badly over the quote on these gloves -- not as Allen and Hanburys, but as a supplier -- and we considered that on a \$8,000 to \$9,000 contract we were justified in quoting the same price as we did before. This we did, as you see. Subsequently, as you appreciate, we were virtually forced to amend our quotation to \$5.95, which was done in the letter No. 976."

(Evidence, pp. 35-37)

Mr. McEwan gave evidence before the Commission as to Sterling Rubber's attitude toward Allen & Hanburys Company Ltd. His testimony included the following:

"Q. Did the price quoted by Allen & Hanburys of \$5.25 per dozen, have anything to do with the writing of that letter [of December 4, 1956] ?

A. When that letter was written I did not know of the existence of this tender, and I had not any idea what he had quoted.

Q. You did not know what he had quoted. So that when you wrote this letter of December 4th, 1956, you did not know that Allen & Hanburys had cut prices?

- A. No. They got in touch with Mr. Amos, who was working for us at the time, and asked him what delivery would be on a certain quantity of gloves. It was a relatively large quantity. I do not believe I had any further information than that they wanted to know what delivery would be on a large quantity of gloves within, say, a period of two or three weeks. That is all the information I had before I wrote that letter, and I had never had any previous contact with Allen & Hanburys.
- Q. At that time I take it your orders -- prior orders -- were quite satisfactory?
- A. Probably we had two or three or four months' production ahead of us.
- Q. Now if at that time Allen & Hanburys quoted to the University Hospital the price of \$5.95, could you have fulfilled that order at that time?
- A. No, we could not.
- Q. Were you anxious to fill any orders from Allen & Hanburys in view of their previous record with you?
- A. Later when Mr. Thomas called me and told me the hospital involved and the awkward situation he was in, to be very honest with you, I would not have supplied gloves to Allen & Hanburys even if I had had them.
- Q. Even if you had them?
- A. Even if I had had gloves I would not have supplied them.
- Q. Why? Would you have supplied them even if you had had them and he had charged \$5.95? Would you have supplied them?
- A. Regardless of the price he charged.
- Q. Regardless of the price you would not have supplied them?
- A. That is correct.
- Q. Why?

A. Well, we had been supplying the University Hospital, Saskatoon, with Surgeon's Gloves. I believe Ingram & Bell had the contract then. This English company, even though we had offered our gloves to them -- and the reason we had offered our gloves to them was that we had sold to Allen & Hanburys in other parts of the world. As a matter of fact you will find in here sales to Allen & Hanburys, South Africa -- even though we had offered our product to them they had bought one dozen gloves from us in three years, and had put their main effort, one hundred per cent of their effort, behind an English glove which they had imported. So they were in effect a competitor of ours of their own choosing; they chose to be a competitor.

Q. That is, they imported the gloves?

A. They imported this English glove, and I know it is their policy to sell English products in preference to Canadian products.

Q. May I ask you: Is the other company an English company?

A. It is, yes.

Q. It is a subsidiary of an English company?

A. That is a subsidiary of an English company, and until they change their policy to sell a Canadian product on at least an equal basis to an English product, I do not think I would supply this company with gloves."

(Hearing, pp. 928-31)

Later in his evidence Mr. McEwan testified:

"Q. . . .

Now, did you indicate at any time to Mr. Thomas that if he persisted in that quotation you would not supply him?

A. No, the reason was given that we did not have the gloves. Actually price would not enter into it because when I found out the hospital involved, I found out through him that the hospital had actually thrown out the English glove. He was the first one to tell me about it, and I found out then the awkward position

he was in, and when he asked me to get him out of it I refused -- well, put it this way: I put it as politely as possible because their South African company is still friendly with us and we want to maintain that, but I definitely refused to supply him. I could not care less what price he quoted, he would not have received gloves.

Q. No matter what price he quoted he would not have received the gloves?

A. If we had had the gloves at the time, which we did not."

(Hearing, pp. 934-35)

It has already been shown from Mr. McEwan's evidence that the major competition which Sterling Rubber encounters in the sale of surgeons' gloves in Canada comes from imports from the United States which are distributed in Canada by some of the dealers regarded by Sterling Rubber as its principal customers. It is not clear from Mr. McEwan's evidence the distinction he drew between the sale of British gloves by Allen & Hanburys Company Ltd. and the sale of American gloves by customers of Sterling Rubber. One difference shown in Mr. McEwan's evidence is that the better quality American gloves have been priced above Sterling Rubber gloves by Canadian dealers, whereas in the case of the British gloves imported by Allen & Hanburys Company Ltd. the price was lower than the price of Sterling Rubber gloves. Mr. McEwan stressed, in his evidence, the lack of support for Sterling gloves by Allen & Hanburys Company Ltd. and their promotion of the sale of English gloves in Canada. There is the further point that in the case of the quotation to the University Hospital, Saskatoon, Allen & Hanburys Company Ltd. apparently offered Sterling Rubber gloves at the price at which British gloves had been supplied previously (Serial 977, Exhibit S-4), which price, of course, was lower than the price suggested by Sterling Rubber.

7. Conclusions with Respect to Sterling Rubber Company Limited

This inquiry, in the case of Sterling Rubber, has been concerned with that company's policies in connection with the distribution in Canada of surgeons' rubber gloves of its manufacture, with particular reference to attempts to secure the maintenance of resale prices.

Section 34 of the Combines Investigation Act, enacted in December, 1951, forbids a manufacturer or other supplier, directly

or indirectly, from requiring or inducing, or attempting to require or induce, any other person to resell an article at a specified price or at not less than a minimum price, and makes it unlawful for a supplier to refuse to sell or supply an article or commodity to any other person for the reason that such person has resold or offered to resell the article or commodity at less than a price specified by the supplier or has refused to resell or offer for resale the commodity at not less than a specified price.

For a number of years and at least since March, 1953 Sterling Rubber has issued to the trade price lists containing suggested hospital prices for surgeons' rubber gloves. Since Mr. T. A. McEwan became Sales Director of Sterling Rubber in July, 1954 it has been the policy of the company to attempt to persuade dealers selling Sterling Rubber surgeons' gloves to observe the resale prices suggested by the company. Mr. McEwan said that this policy was regarded as an "educational programme" pursued with all the company's dealers with the object of showing them "the advisability of selling at our suggested price" (Hearing, p. 827). Mr. McEwan said that he regarded the margin offered by the company's suggested resale prices as a low one for that type of product and the minimum necessary to enable the dealer to carry stocks without incurring a loss.

From the viewpoint of Sterling Rubber, it had been found, according to Mr. McEwan's evidence, that when Sterling Rubber surgeons' gloves were sold by one or more dealers at less than the suggested resale prices the sales of the company's products tended to fall off as dealers concentrated on the promotion of the sale of imported rubber gloves. The latter are usually distributed on an exclusive basis by individual dealers who thus encounter no direct price competition on the particular brand of glove for which one firm is the sole distributor in Canada. It appears to be the belief of Mr. McEwan that competition from imported rubber gloves distributed on an exclusive basis makes it necessary for Sterling Rubber to attempt to persuade dealers handling its products (the larger of which also usually have representation for an imported line) to sell on a non-competitive basis in terms of resale prices.

In the opinion of the Commission the actions taken by Mr. T. A. McEwan as Sales Director of Sterling Rubber, through discussions and correspondence with those dealing in the company's products, constituted attempts to induce dealers handling Sterling surgeons' gloves to resell such products at prices not less than the suggested resale prices issued by Sterling Rubber. The company's actions were not limited to the issuance of suggested resale prices which dealers could decide to use or not without any direct or indirect influence from the supplier, but during the period covered by the inquiry Mr. McEwan made persistent and strenuous efforts in what he called "an educational programme" to persuade dealers to follow the resale prices suggested

by Sterling Rubber. The efforts at persuasion made by Sterling Rubber did not remain confined to the advisability of the dealer securing a particular margin over cost but became linked with other actions of Sterling Rubber in connection with the termination of dealerships and delays in the filling of orders placed with the company.

In writing to Mr. C. W. Kitchen of Sterling Surgical Supply Company in 1955, Mr. McEwan stated that it was the policy of Sterling Rubber to "discourage price cutting" and that the company would "take steps to discourage whoever is cutting by long delays in shipments" (Exhibit E-1). Although Mr. McEwan insisted that Sterling Rubber did not, in fact, take any such steps he made it clear that Sterling Rubber wanted its dealers to believe that the company would act in this manner. It is the opinion of the Commission that dealers informed of such a policy of the supplier would clearly regard it as an attempt on the part of the supplier to require the observance of suggested resale prices by persons engaged in reselling the products.

The situation which arose after Hyman Surgical Supply Ltd. secured a contract for Sterling surgeons' gloves from University Hospital, Saskatoon in the summer of 1955 is an illustration of the manner in which Sterling Rubber made use of its indicated policy. It will be recalled that the dealer was informed that it would not be possible to fill his order for six weeks or possibly longer because of prior heavy export and domestic commitments and seasonal production curtailment because of heat and holidays.

Although Mr. McEwan told the Commission that production limitations were the actual reason for the time required to fill the order received from Hyman Surgical Supply Ltd. in the summer of 1955, he had told other dealers at the time of the manner in which the order was being handled in such a way that he hoped they would believe that the delay was being deliberately made because Hyman Surgical Supply Ltd. had taken a contract at less than the suggested resale prices. This construction of the action of Sterling Rubber was carried further by Mr. McEwan when he arranged to have a prompt shipment made to Stevens & Son Ltd., Winnipeg to permit this firm to meet some of the requirements of University Hospital, Saskatoon, which had not been met because of the delay in filling the order placed by Hyman Surgical Supply Ltd. Mr. McEwan said the Stevens company would be given preference on delivery because it was a larger and more steady buyer than Hyman Surgical Supply Ltd., but in informing others in the trade of the situation Mr. McEwan related the difference in time of delivery of orders to the fact that Hyman Surgical Supply Ltd. had not observed the suggested resale prices of Sterling Rubber.

The termination of the dealership of Sterling Surgical Supply Company, Edmonton, in 1956 was also used by Mr. McEwan as an example to other dealers of the way in which Sterling Rubber dealt

with those who sold Sterling gloves at prices lower than the suggested resale prices. Mr. McEwan said, in evidence, that he wanted other dealers to have the impression that Sterling Surgical Supply Company had been cut off by Sterling Rubber because of price cutting. Such an interpretation of the refusal to continue trading relationships with a particular dealer would readily be regarded by others in the trade as a threat of similar action if suggested resale prices were not maintained.

The manner in which orders of Imperial Surgical Company, Winnipeg, for surgeons' rubber gloves were dealt with by Sterling Rubber in 1956 further illustrates the policy of Sterling Rubber in seeking to secure the observance of its suggested resale prices. In July, 1956, Imperial Surgical Company was given an order, on tender, to supply 150 gross pairs of Sterling Rubber surgeons' gloves over a six months' period to the Royal Alexandra Hospital in Edmonton. The price at which the gloves were to be supplied by Imperial Surgical Company was lower than the suggested resale prices of Sterling Rubber, and a check on this point was made by Mr. McEwan of Sterling Rubber when he became aware that Imperial Surgical Company had ordered such gloves from Sterling Rubber. Mr. McEwan sent a letter to one of the company's dealers in Toronto who had affiliates in Western Canada in which he wrote, "Could you find out if Imperial have cut any prices so that I can take action . . ." (Serial 278), and in August Mr. McEwan called the manager of Imperial Surgical Company by long distance telephone and told him that Sterling Rubber had received complaints from other dealers and that Imperial Surgical Company was foolish to sell at the price at which the order had been accepted (Hearing, pp. 903-04). Imperial Surgical Company then wrote to the Royal Alexandra Hospital referring to the telephone conversation with Mr. McEwan of Sterling Rubber and indicating that shipments from Sterling Rubber would be curtailed unless the price at which the gloves would be resold could be raised (Exhibit E-6). Mr. McEwan said, in evidence, that he had pointed out the lack of profit in the price at which Imperial Surgical Company had taken the order but had not threatened to hold up supplies. However, in a letter of September 7 to Imperial Surgical Company, Mr. McEwan had written "Suggest you do not make any commitment to supply our gloves until I am in Winnipeg and we can discuss the matter" (Serial 503). Although Imperial Surgical Company supplied 50 gross of Sterling Rubber gloves to the Royal Alexandra Hospital in August and September, 1956, an order for an additional 50 gross, dated August 14, 1956, remained unfilled by Sterling Rubber until it was cancelled on October 23, 1956 (Serial 517). The manager of Imperial Surgical said that the order was cancelled when another make of glove was secured for distribution. Writing to a dealer in Calgary in January, 1957, Mr. McEwan of Sterling Rubber referred to the situation which had arisen with Imperial Surgical Company as the time "when we had our battle with them" (Serials 541-42). The Commission considers that in connection with

the order for Sterling Rubber surgical gloves which Imperial Surgical Company accepted at a price less than the suggested resale price, Sterling Rubber made strong efforts to persuade Imperial Surgical Company to desist from completing the order for the Royal Alexandra Hospital or to complete the filling of the order at not less than the resale prices suggested by Sterling Rubber.

It was submitted on behalf of Sterling Rubber that attempts by the company to secure the observance of suggested resale prices by its dealers were necessary to maintain interest in the sale of rubber gloves produced in Canada and thus provide conditions in which manufacture in Canada could be continued. It was pointed out that as Sterling Rubber is the only Canadian manufacturer of surgeons' rubber gloves its products must compete in Canada with imported gloves, the manufacturers of which are free to establish their own conditions for the sale of their products to Canadian distributors and who, in most cases, establish exclusive distributorships which remove price competition among dealers in the resale of the same trade-marked article in Canada. In consequence, it was submitted by Sterling Rubber, dealers in Canada push the sale of imported gloves to the disadvantage of the Canadian product whenever there is price competition among dealers in Canada in the sale of Sterling Rubber surgeons' gloves.

The evidence put before the Commission does not convince us that the continuance of the manufacture of surgeons' rubber gloves in Canada is dependent upon the avoidance of price competition in the resale of such products in Canada. In fact, we consider that sufficient advantage has not been taken of the freedom which dealers in Canada have under section 34 of the Combines Investigation Act to build up the demand for Canadian-produced gloves on the basis of the favourable prices which can be offered to prospective buyers along with the superior varieties and qualities which are claimed for Sterling Rubber surgeons' gloves. The principal competition which Sterling Rubber has experienced in the Canadian market has come from surgeons' gloves imported from the United States, largely distributed through the system of exclusive dealerships previously mentioned. These gloves have been of the latex type. Sterling Rubber manufactures not only the latex type of glove, which is made directly from liquid tree rubber, but also a brown milled type of glove made from rubber which has been previously smoked and dried. It is claimed by Sterling Rubber that the brown milled type of glove has superior qualities for surgical purposes to the latex type of glove and in most markets is sold at a higher price than the latter. In Canada, however, Sterling Rubber offers brown milled gloves at no higher cost than latex gloves.

The manufacture of surgeons' rubber gloves in Canada is protected by the Customs Tariff which provides a duty of 25 per cent on imports from the United States and 20 per cent on imports entitled to British Preference. Although Sterling Rubber has considered that,

at times, these rates of duty have not been fully effective, it was stated in behalf of the company that at the time of the hearing the prices of Canada of surgeons' gloves imported from the United States were approximately 20 per cent higher than Sterling Rubber gloves.

The evidence in the inquiry makes clear that there are already substantial buyers of surgeons' rubber gloves in Canada who are actively interested not only in the quality of the gloves which are purchased but also in securing supplies on a competitive price basis. It would be expected that similar considerations of quality and cost would be influential with all substantial purchasers once it became recognized that there was active competition among dealers in the supply of surgeons' rubber gloves made by Sterling Rubber.

The evidence is that the price of Sterling Rubber gloves at the factory is less than the laid-down cost in Canada of gloves imported from the United States, the principal source of competition. This position, no doubt, results at least in part from the Canadian duty on imported gloves.

Sterling Rubber also claims that gloves of its manufacture are superior to imported gloves, particularly in the case of gloves made from brown milled rubber. Under these circumstances, if Sterling Rubber pursues an energetic, intelligent sales policy, the Commission finds it difficult to believe that its product will not find ready acceptance in the markets of Canada. The natural advantages possessed by Sterling Rubber should suffice to overcome the unfavourable reaction on the part of distributors alleged to result from instances of price cutting.

CHAPTER IV

ALLEGED POLICY OF RESALE PRICE MAINTENANCE IN CONNECTION WITH PRODUCTS OF BARD-PARKER COMPANY, INC.

1. Pricing Policies of Bard-Parker Company, Inc.

In the description of Bard-Parker Company, Inc., Danbury, Connecticut, given earlier in this report, it was mentioned that the principal products of the company are surgical blades and handles. Bard-Parker manufactures certain other products and acts as a distributor of germicidal solutions manufactured by its associated company, Parker, White & Heyl, Inc.

The Statement of Evidence contains the following paragraph referring to the type of surgical blade made by Bard-Parker:

"Bard-Parker blades are known as 'Rib-Back' because their design incorporates a rib at the back of each blade which increases the rigidity of the blade. They are recognized as being of very high quality and are preferred by many surgeons over other brands."

For surgical blades Bard-Parker has had a single price in selling to Canadian dealers but has established a scale of quantity discounts to be applied against the list price for resale. At the time of the inquiry the resale list price was \$1.50 per dozen or \$18.00 per gross and the price to dealers \$10.20 per gross. The dealer price was subject to a discount of 5 per cent for contract sales which are described in the following outline of the price structure given in the Statement of Evidence:

"111. Bard-Parker blades are sold subject to certain quantity discounts. The list price shown on a price list in effect at the time of the inquiry was \$1.50 per dozen. This was stated to be subject to the following quantity discounts:

'Orders for 1 gross or more of assorted sizes of blades for unit delivery take the following discounts:

1 to less than 5 gross	10% off list
5 to less than 25 gross	15% off list
*25 to less than 50 gross	20% off list
*50 to less than 100 gross.....	25% off list
*100 gross or more	30% off list

These discounts will also apply to other B-P and Parker, White & Heyl products, except the Reese Dermatome and Carrying Case, when included in the same order for knife blades.

*May be purchased on Annual Hospital Contracts for delivery as needed.'

(Serial 35)

Thus, the net prices per gross, taking these discounts into account, would be

1 to less than	5 gross	\$16.20 per gross
5 to less than	25 gross	15.30 per gross
25 to less than	50 gross	14.40 per gross
50 to less than	100 gross	13.50 per gross
100 gross or more		12.60 per gross

As indicated by the footnote in Serial 35 above, purchases of twenty-five or more gross may be made under annual contract by hospitals and the evidence indicates that most purchases by hospitals are made under such contracts. The contracts provide that the purchasing hospital will buy a specified quantity of blades over a one-year period and, in consideration of its so doing, will be allowed the applicable discount from current list prices. Under these contracts, delivery may be taken as blades are required, provided the total number specified in the contract is purchased during the one-year period.

...

112. These contracts are between the hospital and the dealer (or dealers) and, while subject to the approval of Bard-Parker, the latter is not a party to them. The goods are sold by Bard-Parker to the dealer who resells them to the hospital. All sales to dealers by Bard-Parker are made at the same price initially but, when a dealer resells under a contract with a hospital, he is allowed a rebate of five per cent on such sales. This rebate is the same regardless of the quantity covered

by the contract or the discount to the hospital provided for by the contract. Thus, in the first instance, a dealer pays Bard-Parker \$10.20 per gross for blades and list less forty per cent on other items (price and discount at the date of the inquiry). Assuming it sells to hospitals under contracts, the dealer will allow some hospitals a discount of twenty per cent, others twenty-five per cent, and still others thirty per cent off list. (As already noted, list price for blades at the date of the inquiry was \$18.00 per gross.) On all such sales the dealer receives a rebate from Bard-Parker of five per cent off the dealer price of \$10.20.

Several dealers may be parties to a contract with the same hospital, this was the case in each of the contracts set out above as examples. This means, of course, that a particular dealer may sell one gross of blades to Hospital 'A' at a thirty per cent discount and sell ten gross of blades to Hospital 'B' at a twenty per cent discount because of the particular contracts under which each hospital is buying.

No rebate is allowed when a dealer sells to a customer not under contract. Such sales appear to be made only infrequently, especially in the case of blades, as the majority of sales are made under contract.

Under the system, Bard-Parker sets the prices at which dealers are to resell its products (i. e., the contract provides that the hospital will buy from the dealer at a specified discount from printed list prices). It requires that copies of contracts between dealers and hospitals be filed with it. It also requires that dealers submit copies of invoices or other reports on sales made pursuant to contract. If the invoices or reports indicate that dealers have resold at other than the list price, or list price less specified discount, as the case may be, the dealers are asked to re-bill the customer."

The following is an example of the consumer contract form issued by Bard-Parker and cited in the Statement of Evidence:

"CONSUMER CONTRACT DIVISION
Bard-Parker Company, Inc.
Danbury, Conn. U.S.A.

PURCHASE CONTRACT

Subject to the approval of Bard-Parker Company, Inc., we, The Royal Columbian Hospital, of New Westminster, B.C. agree to purchase from the dealers subscribed below for our own consumption 25 gross of Bard-Parker Rib-Back Blades during the course of one year from the date of acceptance hereof, to be shipped and billed in quantities as we may from time to time designate; in consideration of which we shall be entitled to a discount of 20 per cent from the current printed list price of such blades. This discount shall also apply to any other of the Bard-Parker products listed on the reverse side hereof bought during the term of this contract in quantities otherwise carrying a lesser discount. In the event that we shall not have completed the purchase of the 25 gross of blades by the end of the contract year, it is understood that we will then accept delivery of the balance of such 25 gross of blades at 20% discount, as above provided, or in lieu of this, we agree to accept revised invoices and remit to the supplying dealer the difference between this quantity contract discount and the quantity discount which was, at the time of the signing of this contract, applicable to the quantity of Bard-Parker Rib-Back Blades actually bought during the contract year.

DATED: March 11/53

The Royal Columbian Hospital
HOSPITAL

WITNESS: [signature indistinct]

BY: [signature indistinct]
PURCHASING AGENT TITLE

ACCEPTED

THIS CONTRACT APPROVED

B.C. Stevens Co. Ltd., Vancouver
DEALER

COOPER CAMPBELL & CO.

BY: Per:-Gordon Campbell

BY: C. Prevost
TITLE

BARD-PARKER COMPANY INC.
AUTHORIZED REPRESENTATIVE

Fisher & Burpe, Limited
DEALER

BY: 'V. C. Lazier' (as per his
TITLE

(OVER)

letter of March 5th &
hospital authorization
of Feb. 13/53)

BARD-PARKER REPRESENTATIVE'S COPY
Printed in U.S.A."

(Serial 2)

The reverse side of this contract form is as follows:

"BARD-PARKER PRODUCTS SUBJECT TO THE
TERMS OF THIS CONTRACT

B.P. HANDLES--ALL TYPES B.P. TRANSFER FORCEPS--
NO. 800, OR PARTS
B.P. CONTAINERS--NO. 300, 400, 500, OR PARTS THEREOF
B.P. PIPETTES

B.P. SCISSOR EDGES

B.P. CHLOROPHENYL
SOLUTION

B.P. FORMALDEHYDE GERMICIDE SOLUTION
(SPORICIDAL)

DERMATOME ACCESSORIES

Precision Throw-Away Blade, Thickness Shims,
Dermatope, Compound, Compound Brush

DELIVERIES MADE

DATE:

<u>Fisher & Burpe</u>	<u>Stevens Co.</u>
<u>Mar. 5/53 - 1 gross</u>	<u>Apr. 9/53 - 2 grs.</u>
<u>June 30/53 - 6 grs.</u>	<u>" 30/53 - 5 grs.</u>
<u>October 27/53 - 1 grs.</u>	<u>May 14/53 - 3 grs.</u>
<u>" 19/53 - 1 grs.</u>	<u>June 4/53 - 4 grs.</u>
<u>" 19/53 - 2 grs.</u>	<u>Aug. 13/53 - 5 gross</u>
<u>Dec. 24/53 - 3 grs.</u>	<u>Sept. 3/53 - #4270 - 8 gross</u>

Dec. 24/53 - 2 grs.	Nov. 2/53 - 2 gross (Letter from Vanc.)
" 24/53 - 1 grs.	Jan. 4/53 - 1 gross (" " ")
	Feb. 12/54 - 2 gross (" " ")
17 gr.	Feb. 25/54 - 11 gross (" " ")
	43 gr.
	"

(Serial 3)

Purchase contract forms were also issued by Bard-Parker containing the appropriate rates of discounts for 50 gross contracts and 100 gross contracts. The former contained the following additional provision:

" . . .

It is likewise understood that if the quantity of blades purchased against this contract is sufficient to justify a larger contract discount, refund of the difference will be made by the dealer at the end of the contract term.

. . ."

(Serial 254)

Although, as the Director points out in the extracts quoted above, Bard-Parker is not a party to the contract between a hospital and a dealer or dealers for the supply of Bard-Parker products, the contract system is an arrangement established by Bard-Parker to control the prices at which its designated products are re-sold by dealers to hospitals agreeing to the conditions of the contract, which contract is subject to the approval of Bard-Parker.

In the Statement of Evidence the Director of Investigation and Research expresses the view that the system of pricing under the contract arrangement provides complete machinery for controlling the prices at which dealers re-sell Bard-Parker products. The following review of the evidence as to the degree to which the contract provisions are supervised is then given:

"113. . . . However, in his oral evidence, Mr. Campbell denied that any pressure was actually put on dealers - while either he or Bard-Parker would write to a dealer as a matter of routine and point out, for instance, that Hospital 'A' should be re-invoiced for the amount of an unearned discount granted to it, no check-up was made to see that the Hospital was actually billed as requested. His opinion was that in most cases the dealers were reluctant to bill the hospital for the comparatively small amount involved and did nothing about it.

Mr. Campbell also emphasized another aspect of the matter. He said that in the United States, goods were supplied to dealers on a consignment basis and because of this and the operation of the 'Fair-Trade' laws the company could and did control resale prices. He also said that most of the letters written by officials of the company and the practices followed simply reflected the procedure in the United States but that the company realized that it could not properly control resale prices in Canada because of Canadian law and made no attempt to do so beyond suggesting that its system be followed. Part of Mr. Campbell's evidence on this point is as follows:

'A. Yes. There I think there may be some conflict between the policy in the States and in Canada. The business of Bard-Parker in Canada is entirely different from the business in the United States. In the United States all Bard-Parker products are fair traded, and in addition the Bard-Parker Company owns the dealer's inventory. When they grant a franchise to the dealer they put the inventory into the dealer's shelves; the dealer sells from that inventory, and at the end of the month he sends them a statement showing what they have left, and the balance is charged to the dealer. Therefore, in the States they can very closely control the policies of their dealers; and in the States I believe they insist that a charge-back be made.

In Canada, however, it is different. The dealer buys goods from the Bard-Parker Company, and he owns them. Then

he sells them to the hospitals. Actually, in Canada the Bard-Parker Company just suggests that a policy be followed; whereas in the States they are in a position to enforce that policy. I think that is where the terminology comes in; I think he thought when he was writing that letter that it was to a dealer in the United States.

Q. Let us take a specific case: if a hospital in Canada fails to fulfil its contract, before giving them a new contract would you check up to see if the charge-back had been paid in respect to its previous contract?

A. No, it has never been done; we have never done that.

Q. Have you on occasion had a hospital fall down on a contract, and come back a year or so later and get a new contract?

A. Yes. That can happen for several reasons. For instance a contract for 50 gross may be signed by them when they have 20 gross of blades on their shelves. They have to use that 20 gross, which is a third of their year's supply, before they can begin buying blades. At the end of the year they have not completed their contract although they have used 50 gross of blades. Usually we would see the contract was signed at the time the hospital actually was in need of buying blades.

BY THE CHAIRMAN:

Q. I was interested in your statement concerning the basis for selling by Bard-Parker in the United States. Is the effect of that arrangement that the dealer really buys on consignment from Bard-Parker, or is he simply an agent selling Bard-Parker products directly for Bard-Parker?

A. I think the dealers are agents -- I guess they buy on consignment. But actually Bard-Parker owns their stock, and if they don't live up to

the terms of Bard-Parker policies, Bard-Parker can go in and take the goods away from them, which I suppose terminates their franchise.'

(Evidence, pp. 144-46)

114. It is probably true that the main reason for the contract system devised by Bard-Parker is to encourage sales of its products. In other words, the company controls or attempts to control resale prices to ensure that the lowest prices will only be given to those hospitals which buy its products in large quantities - thus providing an incentive to hospitals to purchase in quantity. Nevertheless, it appears that the system has operated as an inducement to dealers to resell Bard-Parker products at prices fixed by Bard-Parker and this is so notwithstanding the fact that the company, according to Mr. Campbell, has not policed the system in Canada by anything more than supervision and suggestion.

115. That it was the intention and purpose of the company to control the resale prices and selling policies of its Canadian dealers appears to be clearly shown by oral evidence of Mr. Campbell.

On December 22, 1955, Mr. Campbell wrote Bard-Parker:

'Canadian dealers occasionally have orders for Bard-Parker products, mainly handles and blades, from retail druggists who usually order these as a convenience to their physician customers. Although our policy in the past has been that these should be invoiced at regular prices, they invariably receive a complaint from the druggist that he should receive at least a courtesy discount.

Lou Wheeler [Ingram & Bell Limited] brought this to my attention recently, and recommended that a definite policy be established to take care of such transactions. I consulted several of the other leading dealers here in Toronto, and they were unanimous in their opinion that they should be permitted to give a courtesy discount, and all of them agreed that 15% would be adequate.

If you agree with their thinking on this matter I would suggest that you write a letter to all Bard Parker surgical dealers, suggesting that on orders from retail druggists they allow a 15% discount from list price.'

(Serial 84)

He was asked about this letter and gave the following evidence:

' . . .

Q. In the document I have just shown you, serial 84, you request the head office of Bard-Parker to allow the surgical dealers to grant a discount to retail druggists, is that correct?

A. Yes.

Q. Why should you have to ask the head office about that?

A. It is Bard-Parker's policy that no dealer, that is no Bard-Parker dealer, may sell to an unauthorized dealer who is going to resell the product at less than the list price. The retail druggists are not authorized dealers.

Q. In your letter you do not ask about selling to the druggists, you ask about the discount to the druggists.

A. They all sell to druggists. The point is, whether they shall sell at list price or allow them a courtesy discount.

Q. There is no question of selling price raised, or was there?

A. That is right, there was no question -- Bard-Parker cannot stop any dealer from selling Bard-Parker's products.

Q. All you are asking head office for is to authorize a discount of 15 per cent?

A. That is all, yes.

Q. Did you feel it was necessary to refer that to the head office in the United States?

A. Yes; the Bard-Parker Company establishes all policies in Canada.

Q. Why couldn't the surgical dealers in Toronto or elsewhere in Canada sell to the druggists at whatever price they pleased, without going to the head office about it?

A. Bard-Parker's policy clearly outlines that, for the same reason that a dealer would hesitate to allow a hospital any greater discounts than on the Bard-Parker schedule.

Q. It is Bard-Parker's policy to see that Bard-Parker products are sold at their schedule?

A. Oh, yes.

Q. Do you attempt to see that that is done?

A. We have never enforced it; we try to enlist the dealers' cooperation.

Q. You follow up any instance where you find it is not being done, do you not?

A. Where Bard-Parker suggests, yes.

Q. Don't you follow it up on your own, without Bard-Parker's suggestion.

A. Yes; if we find out some dealer is breaking the Bard-Parker policy we endeavour to follow that up.

Q. Have you been unsuccessful in correcting prices to the suggested price?

A. Unsuccessful in correcting --

Q. Have you ever failed to get a dealer to change to the suggested price?

A. Well, that is difficult to say. If a dealer breaks Bard-Parker's policy in a specific instance, and we go to that dealer and point it out to him, we can't be sure that he is not going to do the same thing in the future, and at that time we won't know about it. I can tell you that a dealer breaks Bard-Parker's policy every month in the year and every year we have been in business, and there are many instances we don't know about.

Q. Have you ever had a dealer tell you he was not going to follow your suggested price on Bard-Parker products?

A. I don't think so, no.

. . .'

(Evidence, pp. 164-66)''

2. Supervision of Contract System by Bard-Parker and its Canadian Representative

Under the contract system already described it is a requirement that dealers in Canada file with Bard-Parker copies of contracts made with hospitals. Dealers are also required to submit to Bard-Parker copies of invoices or other reports giving details of the sale of Bard-Parker products. It is clear, therefore, that Bard-Parker is at all times informed as to the conditions under which its products are being resold by dealers in Canada under contracts made with hospitals. The evidence indicates that close attention is given by Bard-Parker to the fulfilment of contracts by hospitals and to the terms which are given by dealers to hospitals. In addition to the general effects on the resale price of dealers which are brought about by the making of contracts with hospitals on the terms specified by Bard-Parker and then by the reporting of sales made under such contracts, there is the further effect of the fact that the payment of a rebate of 5 per cent to dealers is not made until sales under contract have been reported. The evidence in the inquiry contains examples

of the rebate being withheld where sales were made by a dealer without a contract being in effect. There are no examples of the rebate being withheld pending correction of prices not fully in accord with contract conditions, but it is obvious that the reporting of sales in order to obtain the rebate could not be without effect under the system of contract selling established by Bard-Parker.

The documentary evidence in the inquiry contains a number of examples of steps taken by Bard-Parker or its Canadian representative to check on the observance of contract conditions by hospitals and dealers. A few of these will serve to illustrate the practice followed.

Letter, March 23, 1954, from Bard-Parker to Cooper Campbell:

"REFERENCE YOUR LETTER OF THE 8TH, CONCERNING THE DELIVERY OF 3 GROSS B-P BLADES TO THE ST. JOSEPH'S HOSPITAL, SAINT JOHN, N.B., BY INGRAM & BELL. WE ARE AFRAID THERE IS A LITTLE MISUNDERSTANDING CONCERNING OUR REQUEST THAT INVOICE COPIES NOT BE HELD UP. I BELIEVE YOU ARE REFERRING TO INVOICE COPIES ON CONTRACTS THAT ARE NOT IN EFFECT. IN THIS CASE, INGRAM & BELL HAS MADE A DELIVERY AT THE CONTRACT PRICE WHEN, AS YOU STATED IN YOUR LETTER, NO RENEWAL CONTRACT HAS BEEN RECEIVED. I THINK THEY THEMSELVES WOULD ADMIT THAT IF THE HOSPITAL IS PURCHASING THRU MORE THAN ONE DEALER, THEY WOULD NOT LIKE THEIR COMPETITOR, SHALL WE SAY, DELIVERING AT THE CONTRACT DISCOUNT, AND, IN FACT, IF THE HOSPITAL ADVISES THEM THAT THEY ARE PURCHASING AT THE LOWER PRICE, WITHOUT A CONTRACT, WE HAVE DEFEATED ONE OF THE MAIN PURPOSES OF THE CONTRACT IN THE FIRST PLACE.

TRUST YOU WILL OBTAIN A NEW CONTRACT SOON, BUT SUGGEST THAT I. & B. BE NOTIFIED THAT IN THIS CASE THEY HAVE BROKEN ONE OF THE TEN COMMANDMENTS.

. . . "

(Serial 8)

Letter, April 16, 1954, from Bard-Parker to Cooper Campbell:

"WE ARE IN RECEIPT OF YOUR LETTER DATED APRIL 5TH, CONCERNING TWO RENEWAL BLADE PURCHASE CONTRACTS AND THE PROBLEM INVOLVED IN THE ST. JOSEPH'S HOSP., RENEWAL.

SUPPOSE IT WOULD BE HOPELESS TO INSIST THAT THE CONTRACT BE DATED BACK TO FEBRUARY 4TH, SINCE MOST LIKELY WE WOULD BE FORCED TO GIVE THE HOSPITAL ADDITIONAL TIME AT THE END OF THE CONTRACT YEAR.

AS WE STATED IN OUR LETTER OF MARCH 23RD, INGRAM & BELL SHOULD CERTAINLY BE MADE TO REALIZE THAT THE DELIVERIES MADE AT THE CONTRACT PRICE BEFORE THE RENEWAL WAS SIGNED WAS WHAT SOME OF THEIR COMPETITORS MIGHT CONSIDER UNFAIR COMPETITION. OF COURSE, THIS IS THE PROBLEM WE RUN INTO ALL THE TIME AND HAVE FOUND NO SATISFACTORY ANSWER. IN THE UNITED STATES WE ARE ABLE TO INSIST THE CONTRACT PLAN BE FOLLOWED TO THE LETTER AND TRUST THE CANADIAN AGENTS WILL CO-OPERATE AS FAR AS POSSIBLE.

TO MAKE A LONG STORY SHORT, WE WILL DATE THIS CONTRACT AS OF MARCH 29TH 1954 BUT WILL CERTAINLY EXPECT THAT IT BE COMPLETED WITHIN A YEAR OF THAT DATE.

. . ."

(Serial 11)

Letter, August 3, 1954, from Bard-Parker to The J. F. Hartz Co. Limited, Toronto:

"THE 50 GROSS BLADE PURCHASE CONTRACT FOR THE NATIONAL SANITARIUM ASSN., TORONTO, ONTARIO, WAS TO HAVE EXPIRED ON FEB. 1ST 1954.

ACCORDING TO OUR RECORDS YOU HAVE DELIVERED ONLY 15 GROSS AND 3 DOZEN BLADES, 7-GALS. SOLUTION AND 4 CONTAINERS AND SINCE WE HAVE BEEN ADVISED THAT THE HOSPITAL DOES NOT WISH TO COMPLETE THEIR CONTRACT WE ARE

CONSIDERING IT CANCELLED. WE WOULD, THEREFORE, APPRECIATE YOUR ISSUING A CHARGE-BACK TO THE HOSPITAL FOR THE DISCOUNT DIFFERENTIAL ON THE DELIVERIES WHICH YOU MADE AT THE 50 GROSS CONTRACT PRICE.

KINDLY MARK YOUR RECORDS ACCORDINGLY AND BEAR IN MIND THAT ALL FUTURE DELIVERIES TO THIS HOSPITAL OF PRODUCTS OF OUR MANUFACTURE ARE TO BE BILLED AT THE UNIT DELIVERY PRICE."

(Serial 18)

Letter, June 1, 1954, from Bard-Parker to The J. F. Hartz Co. Limited, Montreal:

"ON DECEMBER 15TH LAST WE RECEIVED YOUR INVOICE COPY NO. 16827, DATED NOV. 25, 1953 COVERING THE FIRST DELIVERY MADE TO THE ROYAL VICTORIA HOSPITAL IN YOUR CITY UNDER THE TERMS OF THEIR 100 GROSS CONTRACT. WE ALSO HAVE JUST RECEIVED SEVERAL COPIES OF DELIVERIES MADE DURING APRIL AND MAY TO THIS SAME HOSPITAL AND NOTE THAT ON ALL OF THE ABOVE THE BILLINGS ARE BASED ON THE PRICE OF \$12.25 PER GROSS AND THE CORRECT BILLING IS \$12.60 PER GROSS UNDER THE TERMS OF THE 100 GROSS CONTRACT.

WE WOULD APPRECIATE YOUR ISSUING CORRECTED BILLING TO THE HOSPITAL, FORWARDING A COPY OF SAME TO COMPLETE OUR FILES.

THANKING YOU FOR YOUR CO-OPERATION, WE ARE "

(Serial 12)

Letter, June 18, 1954, from Cooper Campbell to The Stevens Alberta Co. Ltd:

"With regard to the enclosed invoice copies, we cannot allow rebate on the sale to St. Michael's General Hospital, Lethbridge, Alta., since we have no contract with this hospital. We had a 25-gross

contract previously, signed on September 16th, 1952, but the hospital did not purchase the required amount, even though the contract was extended for some months, and it was necessary therefore to cancel it.

Accordingly I would suggest that you simply sell them on a day to day basis, unless they feel that they can use 25 gross of blades per year, and are willing to sign a new contract on this basis.

With regard to the invoices for the Holy Cross Hospital, Calgary, and the Royal Alexandra Hospital, Edmonton, Stevens are not listed on these contracts, and we cannot therefore allow the rebate unless you obtain authorization from these hospitals to add Stevens' name and have it dated back to the contract date, which is November 25th, 1953 for the Holy Cross Hospital, and May 17th, 1954 for the Royal Alexandra Hospital."

(Serial 14)

In a letter of December 9, 1954 from Cooper Campbell to Bard-Parker indication is given that while dealers would be requested to make charge-backs in the case of hospitals not buying the quantity of blades specified in the contract it was not expected that they would always do so:

"We have been going over our contract file very carefully in an endeavour to get all delinquent and hopeless ones weeded out. We would therefore recommend that the following contracts be cancelled:

St. Michael's General Hospital,	Lethbridge, Alta.
Holy Family Hospital,	Prince Albert, Sask.
Victoria Hospital,	Prince Albert, Sask.
Providence Hospital,	Moose Jaw, Sask.
The General Hospital,	Sault Ste. Marie, Ont.
Sudbury General Hospital,	Sudbury, Ont.

We will be glad if you will write the agents involved advising them of the cancellations and suggesting to them that they make a charge-back, although we believe they will not do so.

Should there be any other contracts which you feel are not satisfactory, please do not hesitate to advise us.

Kindest regards to all at Bard Parker."

(Serial 26)

The following letter, dated December 17, 1954, was sent by Bard-Parker to The J. Stevens & Son Co. Ltd. and similar letters were sent to other dealers in connection with contracts with other hospitals mentioned in the letter of December 9, quoted above:

"UPON CHECKING YOUR RECORDS YOU WILL FIND THAT THE 25 GROSS BLADE PURCHASE CONTRACT FOR THE SUDBURY GENERAL HOSPITAL, SUDBURY, ONTARIO SHOULD HAVE BEEN COMPLETED ON OCTOBER 14TH 1954.

APPARENTLY YOUR CUSTOMER IS NOT USING A QUANTITY OF BLADES WHICH WOULD ENTITLE THEM TO A CONTRACT AND DO NOT WISH TO PURCHASE THE BALANCE NECESSARY TO COMPLETE THEIR PART OF THE AGREEMENT.

WE WISH TO BE AS FAIR AS POSSIBLE AND FEEL THAT IN THIS CASE THEY HAVE BEEN ALLOWED SUFFICIENT TIME TO COMPLETE AND WE ARE, THEREFORE, CONSIDERING THIS CONTRACT CANCELLED. WE WOULD SUGGEST THAT YOU ISSUE A CHARGE-BACK TO THE HOSPITAL COVERING THE UNEARNED DISCOUNT, AND BEAR IN MIND THAT ANY FUTURE DELIVERIES OF OUR PRODUCTS TO THEM ARE TO BE BILLED AT THE UNIT DELIVERY PRICE.

PERHAPS AT SOME LATER DATE THEIR BLADE USAGE WILL INCREASE SO THAT ANOTHER CONTRACT MAY BE CONSIDERED AT THAT TIME."

(Serial 27)

Letter, January 11, 1955, from Cooper Campbell to Campbell & Hyman Limited:

"The 25-gross Bard Parker blade contract for the Misericordia Hospital, Winnipeg, Manitoba, expires on January 12th, 1955. Our records show that they purchased over fifty gross of blades during the contract period. We would appreciate it, therefore, if you could secure a new contract for fifty gross.

It is Bard Parker's policy, where a 25-gross contract holder purchases in excess of fifty gross during the contract period, to ask the dealers involved to rebate the hospital the difference between the 25-gross price and the 50-gross price, which amounts to 90¢ a gross.

For your information, our records show that this hospital purchased 39 gross of blades from you. We would therefore recommend that you rebate the hospital this difference. This will be a matter of discretion between yourself and Stevens."

(Serial 43)

Letter, January 24, 1955, from Cooper Campbell to Ingram & Bell Limited, Montreal:

"We found your letter concerning the Hospital Notre Dame very interesting indeed. It should be borne in mind that the Bard Parker contracts are completely dependent upon the hospital's using Bard Parker blades, and the granting of discounts on other products such as handles, forcep jars, etc., is incidental.

It would seem that the hospital is using another blade, and yet obtaining contract prices on other Bard Parker products. We are most anxious to prevent this, and if you can give us the name of the dealer who is supplying these products at contract prices we will certainly do everything possible to stop this practice.

We would very much appreciate any further information you can give us on this subject.

With kindest regards, we are "

(Serial 46)

Letter, February 24, 1955 from Bard-Parker to Cooper Campbell:

"WE ARE SORRY TO HEAR THAT THE NEW MT. SINAI HOSPITAL IN YOUR CITY DOES NOT REALIZE THE ADVANTAGE OF PURCHASING B-P BLADES. I SHOWED YOUR LETTER OF THE 18TH TO J. H. AS A MATTER OF INTEREST, AND ALSO TO DISCUSS WITH HIM THE BEST WAY TO HANDLE THIS SITUATION.

HE DEFINITELY FEELS THE CONTRACT SHOULD BE CANCELLED AND INSISTS THAT THE AGENTS ISSUE A CHARGE-BACK TO THE HOSPITAL ON THE BLADES, HANDLES AND SOLUTION AND CONTAINER PARTS DELIVERED. WE, OF COURSE, WILL BE GLAD TO WRITE THE AGENTS INVOLVED IF YOU WISH, ALTHO FOR YOUR CONVENIENCE WE HAVE TOTALED THE VARIOUS DELIVERIES MADE BY THE STEVENS COMPANIES, THE J. F. HARTZ CO., LTD., AND INGRAM & BELL.

ASSUMING, OF COURSE, THAT YOU ARE GOING TO TAKE CARE OF THIS WILL YOU PLEASE HAVE THE AGENTS FORWARD TO US A COPY OF THE CHANGE [sic] BACK WHEN THE TRANSACTIONS TAKE PLACE.

PERSONALLY, WE FEEL THAT IT WILL NOT BE LONG BEFORE THEY REALIZE THE ADVANTAGES OF BARD-PARKER PRODUCTS AND NO DOUBT WILL BE BACK IN THE FOLD."

(Serial 52)

Letter, March 1, 1955 from Cooper Campbell to Bard-Parker:

"We have been advised by Fisher & Burpe Limited, Winnipeg, Manitoba, that the St. Joseph's General Hospital, Port Arthur, Ontario wish to cancel their 25-gross Bard Parker contract, which expired on February 22nd.

In view of the fact that they purchased only 5 gross of blades on this contract, we deem it advisable to not ask Fisher & Burpe to make a charge-back."

(Serial 56)

Letter, March 4, 1955, from Bard-Parker to Cooper Campbell:

"REFERENCE YOUR LETTER OF THE 1ST, THE ST. JOSEPH'S GEN'L HOSPITAL, PORT ARTHUR, ONT., APPARENTLY PLANS TO TRY SOME OTHER BLADE AND I FEEL SURE THEY WILL DISCOVER IN THE END THAT THEY SHOULD HAVE STUCK WITH B-P. HOWEVER, SINCE WE ARE NOT AT ALL CLEAR ON THE FACTS IN THIS CASE, WE WILL GO ALONG WITH WHATEVER YOU SUGGEST. IT DOES SEEM, HOWEVER, THAT A CHARGE-BACK ON 5 GROSS OF BLADES AMOUNTS TO SO LITTLE, THE AGENT INVOLVED SHOULDN'T BE TOO LEARY [sic] ABOUT ISSUING THE CHARGE-BACK.

WE KNOW THAT THIS POLICY HAS NOT BEEN FOLLOWED STRICTLY TO THE LETTER, IT HAS AS YOU WELL KNOW, RESULTED IN THE POLICY LAPSING. WE WOULD LIKE TO POINT OUT THAT IF THE CHARGE-BACK IS NOT MADE, WE WOULD NOT CARE TO ENTER INTO ANOTHER AGREEMENT WITH THIS INSTITUTION AND TRUST FISHER & BURPE REALIZES THIS.

CERTAINLY I AM NOT TOO WORRIED ABOUT THIS SITUATION EXISTING, ESPECIALLY SINCE I HAVE THE PLEASURE OF ADVISING YOU THAT 'BIG JIM' McLELLAN IS TAKING OVER HOSPITAL CONTRACTS, AND WHO I KNOW WILL DO EVERYTHING POSSIBLE TO AID YOU IN YOUR CONTRACT WORK IN CANADA.

. . ."

(Serial 61)

Letter, December 20, 1955, from Cooper Campbell to Fisher & Burpe Limited:

"The 50-gross Bard Parker blade contract for St. Paul's Hospital, Saskatoon, Sask., expired early last month and to date the total quantity of blades purchased by this hospital has been 25-gross. We have been advised by Bard Parker Company, Inc., that they will close the contract at the 25-gross level, and send your company commission cheque next month.

It is customary for the dealer to invoice the hospital for the difference in discount between the 50-gross and 25-gross quantities, which amounts to 90¢ gross, or on the basis of 25-gross a total of \$22.50. You, of course, may use your own discretion as to whether you wish to rebill the hospital for this amount. In the meantime, of course, the hospital should not receive any contract discounts on Bard Parker products until they make a new contract, which should be for 25-gross only, and carry a discount of 20% from list.

I have been very disappointed in this contract because I feel that a hospital of this size, doing the amount of surgery they do, could very easily use 50-gross of blades in one year. I would be very interested to have your views in this matter, and would welcome any suggestions you might make.

. . ."

(Serial 83)

Letter, February 28, 1956, from Cooper Campbell to Stevens & Son Ltd.:

"We have been informed by Bard Parker that on your invoice of February 6th, 1956, to the Children's Hospital, Winnipeg, you extended a discount of 25% on Bard Parker blades.

As this contract is only for 25 gross, the correct discount is 20% from list, and which you had given them on their invoice of July 29th.

We would appreciate it if you would explain this error to the hospital and re-bill them."

(Serial 93)

Letter, March 2, 1956 from Stevens & Son Ltd. to Cooper Campbell:

"Ref: Our Invoice No. W 22091
February 6th, 1956

Thank you for your letter of February 28th, drawing our attention to the error in regard to the discount extended on the marginally noted invoice to the Children's Hospital, Winnipeg.

We have entered an additional charge to the hospital for the differential of \$2.70, and are attaching a copy of a corrected invoice for your records.

. . . "

(Serial 94)

Letter, May 4, 1956, from Cooper Campbell to G. A. Ingram Co. (Canada) Limited, Windsor:

"We are enclosing a new Bard Parker blade contract from the South Waterloo Memorial Hospital, Galt, Ontario.

We are also returning to you an invoice of March 10th for the same hospital for two gross of blades. There was no contract in effect at the time this order was placed, and also the price should have been \$14.40 per gross instead of \$13.50, which is the price to 50 gross contract holders.

We are also returning an invoice for the Welland County Hospital, Welland, Ontario, for 3 gross of blades, since this hospital has not been under contract for some years. We would be please [sic] to receive a new 25-gross contract from the Welland County Hospital at any time."

(Serial 95)

3. Conclusions with Respect to Policies of Bard-Parker

The contract system for the sale of surgical blades and other products of Bard-Parker which the company requires its Canadian dealers to use goes far beyond the mere suggestion of resale prices. In the opinion of the Commission it is an arrangement intended to ensure that dealers of Bard-Parker in Canada resell its products at prices specified by Bard-Parker and is, therefore, a means intended to secure resale price maintenance. The purpose of the contract system is made abundantly clear by the fact that a contract may be made between a hospital and several dealers, all of whom undertake to sell to the hospital at exactly the same price. The effect of such an arrangement is to remove price competition among dealers in the resale of products included under the contract.

Counsel for Bard-Parker and Cooper Campbell argued that the contract system which Bard-Parker had its dealers use in connection with the sale of Bard-Parker products in Canada did not contravene section 34 of the Combines Investigation Act and was of benefit to hospitals which used such products. His argument was as follows:

" . . .

It is my submission with regard to the contracts that were used that Bard-Parker Company Inc. was not a party to them and neither was Cooper Campbell & Company, although they approved them they were not parties to them, and the intent of those contracts was to ensure or to endeavour to see that large purchasers of blades got the proper discount so that there was an equitable dealing among all the hospitals and purchasers of blades. All of the correspondence in Chapter III indicates suggestions to dealers that it might be a good practice to deal fairly with all these hospitals and give them all the same discount, depending on the quantities they purchase. My submission is that that was of considerable benefit to the consumers - the hospitals if you want to call them that -- because prior to the institution of such a system a hospital would have to buy 50 gross or a hundred gross of blades all at one time to get the discount, which meant tying up its money and buying a large quantity all at one time; whereas under these contracts they were enabled over a period of a year, to get the supplies they needed as they needed them without tying up their money. The

short form of contract, in itself, it is my submission, does not contravene the present legislation, bearing in mind the result that it was hoped would be achieved by getting all large purchasers to have greater discounts than people who bought just small quantities at one time.

. . . "

(Hearing, pp. 766-67)

While the contract system may have had the effect of establishing maximum prices for Bard-Parker products, it was also intended to establish minimum prices, as the examples from the correspondence quoted in the preceding section of this chapter clearly indicate. For the reasons already given the Commission considers that the contract system cannot be regarded as inoffensive under the legislation.

The argument that the institution of the contract system by Bard-Parker was necessary to provide lower purchase prices for hospitals requiring large quantities of surgical blades during the course of the year rests on the assumption that in the absence of such an arrangement there would be no competition among dealers to offer equal or even more favourable terms of sale if each dealer sought, individually, to promote his own trade. The contract system of Bard-Parker, as the Director submits in the Statement of Evidence, may give rise to serious anomalies. The discount terms are based on the total purchases of Bard-Parker blades by a hospital during the course of the year, without regard to quantities bought from individual dealers or the size of single orders. It appears to the Commission that such a system might result in the discounts given in some cases having no relationship to the actual costs involved in handling individual orders. There is reason to believe that prices established individually by dealers in competition with each other are more likely to reflect economies in handling costs for orders of various sizes and to provide the most favourable terms for those buyers who place their orders in the most economical fashion.

The allegations of the Director are directed against Bard-Parker Company, Inc. of Danbury, Connecticut, U.S.A. and Mr. Cooper Campbell (doing business under the trade name and style of Cooper Campbell & Co.) of Toronto, Ontario. It was submitted on behalf of Mr. Cooper Campbell that he and his firm acted as manufacturers' agents in Canada for a number of manufacturers, including Bard-Parker Company, Inc., and that neither he nor his company buy or sell merchandise of any kind but that their duties are largely promoting the sale of the products of the manufacturers they

represent. Section 34 of the Combines Investigation Act defines a "dealer" as "a person engaged in the business of manufacturing or supplying or selling any article or commodity". The evidence in the inquiry does not indicate that Mr. Cooper Campbell is engaged in any way in the business of manufacturing Bard-Parker products. However, in the opinion of the Commission his activities in connection with promoting the sale of such products and in supervising their distribution in Canada must be considered as engaging him in "the business of supplying or selling" as defined in the Act. On the other hand, there appears to be no evidence in the inquiry which indicates that Mr. Cooper Campbell had a part in establishing the system of resale price maintenance which Bard-Parker had its Canadian dealers adopt. The evidence indicates that in supervising the arrangement Mr. Cooper Campbell was following instructions given to him by his principals in the United States. In this connection the Commission desires to point out that the legislation relating to resale price maintenance makes no distinction in the matter of liability between a principal and an agent, when the latter is a "dealer" within the meaning of the section.

(Sgd.) C. R. Smith

Chairman

(Sgd.) A. S. Whiteley

Member

Ottawa,
May 19, 1959.

